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THE
RIGHT
OF
PROTESTANT DISSENTERS
TO A
COMPLEAT TOLERATION,
ASSERTED;

OR AN
ESSAY,

CONTAINING

An historical Review of their Situation under the Laws imposing the Sacramental Test on Persons admitted to Offices; and shewing the Imposition of that Test to be unjust with Respect to the Protestant Dissenters of England and the Natives of North Britain, as well as inexpedient; with an Answer to the Objection urged from the Act of Union with Scotland; and Proofs that the present is the proper Time for applying to Parliament for the necessary Redress.

TO WHICH IS ADDED

A P O S T S C R I P T,

In Reply to the Arguments of Bishop SHERLOCK on the Subject of the Test Laws, lately republished.

L O N D O N:

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AT a General Meeting of the Deputies of the Three Denominations of Dissenters, held at Dr. Williams's Library, Red Cross Street, London, on Friday the 5th of January, 1787, to consider of an Application to Parliament, for the Repeal of the Corporation and Test Acts,

EDWARD JEFFRIES, Esq; in the Chair.

The Question being put, and fully debated, it was thereupon

RESOLVED Unanimously, That an Application be made to Parliament for a Repeal of the Corporation and Test Acts, so far as they concern Protestant Dissenters.

RESOLVED also, That it be referred to the Committee to take the most effectual Measures for carrying the above Resolution into Execution.

The date of the above Resolution, and a delay afterwards in its coming to the author's hands, will form the best apology for defects, either of

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style or arrangement, in the following work. Six weeks only have been employed in preparing for the press a general review of the arguments in a controversy, which has engaged the pens of the ablest writers, and which, when *last* before the public, was spread out into above a hundred pamphlets. The author is not solicitous about trifling inaccuracies; but he hopes that no mistakes will be found, which can either affect his arguments, or mislead the judgment of his readers. A motion is intended to be made, in consequence of the above Resolutions, in a short period, in one or other House of Parliament; and the conveyance of useful information, even in a homely dress, upon a subject which has lain dormant for almost fifty years, cannot be unacceptable to the Members of either, who wish to judge with candor.

The writer of these sheets desires to be understood as not wishing to express any opinion respecting the Papists.—He pleads for the Dissenters, and it will not be candid, when he is treating upon one subject, that he should be in any way made answerable for another. Yet he cannot suppress his wish to see a more general spread of prudent civil toleration; for though the *object* of toleration be religion, yet the *rule*
by

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by which toleration is to be fixed should be civil; and civil men, whether we judge from theory or experience, seem the only men proper to apply the rule.

It is necessary to add, that though many have endeavoured to place the Sacramental Test and *Oaths* upon the same footing, the Dissenters make a wide distinction between them. They object to the one, but yield a full and chearful submission to the other.

MARCH, 1787.

CON-

ERRATA.

- P. 19, line 2, after *qualify*, add *as the principals must have done*.
- P. 20, last line, for *insidious*, read *infidious*.
- P. 43, Note *, for *this memorable year*, read *the year after*.
- P. 60, at the end add,—or at least, upon finding the opinion of the Court of King's Bench to be against him, did not chuse to make any further resistance, and submitted to be turned out.
- P. 78, line 2, for *supporting*, read *supposing some of*.
—— line 5, for *each*, read *some*.
- P. 92, line 19, after *inadvertence*, insert *even now*.
- P. 95, in title of the Chapter, for *AND* read *as*.
- P. 106, line 20, for *Dr.* read *Archdeacon*.
- P. 124, last line, for *p. 100*, read *p. 109*.
- P. 126, line 14, after *it*, insert *at*.

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T H E

THE
RIGHT
OF
PROTESTANT DISSENTERS
TO A
COMPLEAT TOLERATION,
ASSERTED.

PART I.

CHAP. I.

HISTORY OF THE CORPORATION ACT.

A MIND turned to speculation, contemplates with heart-felt satisfaction the progress of true charity, and universal benevolence throughout the world; and rejoices to behold the spirit of every government in Europe becoming daily more mild and indulgent to those, who cannot conscientiously conform to the established religion of their country. In England the happy period is arrived when many unjust prejudices,

judices, formerly entertained against Nonconformists, are worn out, and when their fellow-citizens have no longer the inclination, if they had the power, to drag them into prisons, or to bind them to the stake. The genius of Persecution has laid aside her instruments of destruction, her gibbets, her racks, and her faggots; but she has not yet relieved this, in other respects, free and happy land, entirely from her presence, or ceased to exert her baneful influence among us,

The Protestant Dissenters complain, that they are still excluded from, and denied their right to, an equal participation of all offices, civil and military, unless they will receive the sacrament according to the usage of the church of England; and that such exclusion is enforced by penalties so severe, and by disabilities so great, that no good man can speak of them without horror,

By the Toleration Act, which is the imperfect Magna Charta of Dissenters, neither the Corporation Act nor Test Act is repealed; and the sacramental test imposed by them is exacted as a qualification for the holding of offices at this day. The object of the intended application to

Par-

Parliament, is to obtain the removal of this ignominious mark of distinction, unjustly fixed upon the Protestant Dissenters.

This stigma upon men, who rank among the best friends of the constitution, and whose patience under suffering has not been less conspicuous, than their uniform attachment to a country, which denies them the rights of citizens, is the more unjust and severe, as the punishment of *their religious* opinions was not in contemplation of the Legislature when either of these acts was passed.

When Charles the Second was invited to assume our government, the bulk of the people was divided into three religious sects, the Presbyterians, Independents, and Antipædo-baptists, and the body of modern Dissenters is now divided into these three denominations. At the Restoration, the particulars in which these sects differed from one another were real and substantial both in doctrine and discipline; at the present day there is hardly any specific distinction between them with respect to the latter. The Presbyterians no longer adhere to a form of church government consisting of parochial sessions, classes, provincial synods, and

general assemblies, but disclaim all attachment to such a system, and more properly fall into the sect of Independents ; agreeing with them that each congregation should be as to its government, both internally and externally, independent of all others. At the period in question, the whole power of the kingdom was in the hands of the Presbyterians ; the Parliament was composed of their friends, their form of church discipline was established, and that of the church of England did not exist.

To conciliate the affections of the different parties, and particularly of the Presbyterians without whose hearty concurrence Charles could not hope to possess the crown, he published the famous Declaration from Breda, which he sent to Sir Harbottle Grimstone, then Speaker of the House of Commons. In that he says,—

“ And because the passion and uncharitableness
 “ of the times have produced several opinions
 “ in religion by which men are engaged in
 “ parties and animosities against each other
 “ which when they shall hereafter unite in
 “ freedom of conversation will be composed of
 “ better understood ; *We do declare a liberty*
 “ *tender consciences, and that no man shall be*
 “ *disquieted or called in question for differences*
 “ *of opinion in matters of religion, which do not*
 “ *disturb*

“*disturb the peace of the kingdom*; and that we
 “shall be ready to consent to such an Act of
 “Parliament as upon mature deliberation shall
 “be offered unto us for the full granting that
 “indulgence.” Trusting to this assurance, the
 Presbyterians, notwithstanding the opposition
 of the other sects, entered heartily into his views,
 and compassed the restoration. Happy had it
 been for the faithless tyrant, and for his more
 unfortunate brother, if he had never broken
 this solemn promise! But dark and intricate are
 the ways of Providence! The sufferings of the
 Dissenters, in breach of it, occasioned ulti-
 mately the expulsion of the family of their per-
 secutor from the throne, and the settling of our
 present happy form of government.

By means of the restoration, the church of
 England was tacitly re-established, but for some
 time afterwards the Presbyterian clergy were
 allowed to retain their livings through the king-
 dom; the King by proclamation stated his in-
 tention to have the liturgy revised, nor was a strict
 conformity either to it or the ceremonies of the
 church exacted; and of the numerous vacancies
 in the bishopricks, which had happened during
 the troubles, several were not filled up. At-
 tempts were made without success, (in which
 the Presbyterians had good reason to complain

of ill usage) to fix upon some discipline and form of worship, that should include them and the friends of episcopacy in one national church. While the terms of this comprehension, projected in pursuance of the King's declaration, were under consideration, the Corporation Act was passed in the year 1661. By that Act, power was vested in commissioners appointed by the King, to turn out what officers in corporations they thought fit, and to place other persons in their room; and it was further enacted¹, that “ after the expiration of the said commissions (which by a subsequent clause² were to be determined on the 25th March, 1663, so that on that day the section we are now to examine took effect) “ no person or persons shall ever hereafter “ be placed, elected, or chosen in, or to, any “ of the offices or places aforesaid *, that shall “ not have within one year next before such

¹ 13 Car. II. c. 1. sect. 12.

² Sect. 13.

* The offices and places before mentioned in the Act, are those of “ Mayor, Alderman, Recorder, Bailiff, Town Clerk, Common Councilman, or any office or offices “ Magistracy, or places, or trusts, or other employment “ relating to or concerning the government of the several “ cities, corporations, and boroughs, and cinque ports “ and their members” within England, Wales, and Berwick upon Tweed.

" election or choice, taken the Sacrament of
 " the Lord's Supper, according to the rites of
 " the church of England," and in default there-
 of every such placing, election, and choice, was
 thereby enacted and declared to be void.

The object of this Act appears from the pre-
 amble to have been the exclusion of persons
 dangerous from their political, not their religi-
 ous opinions. It was there stated to be, " that
 " the succession in corporations might be most
 " probably perpetuated in the hands of *persons*
 " *well affected to his Majesty and the established*
 " *government*; it being too well known that
 " notwithstanding all his Majesty's endeavours,
 " and unparalleled indulgence in pardoning all
 " that is past, nevertheless *many evil spirits are*
 " *still working.*" Mr. Hume * gives the follow-
 ing account of its object: " During the violent
 " and jealous government of the Parliament
 " and of the Protectors, all magistrates liable
 " to suspicion had been expelled the corpora-
 " tions, and none had been admitted who gave
 " not proofs of affection to the ruling powers, or
 " who refused to subscribe the covenant. To
 " leave all authority in such hands, seemed dan-
 " gerous; and therefore the Parliament em-

* Hist. Eng. Vol. VII. p. 383.

“ powered the King to appoint commissioners
 “ for regulating the corporations, and expel-
 “ ling such magistrates as either had obtruded
 “ themselves by violence, or professed principles
 “ dangerous to the constitution, civil or eccle-
 “ siastical.” It is highly probable that this Act
 was purposely framed so as to seem to relate only
 to the civil government, that it might not be
 construed into a breach of the King’s declara-
 tion from Breda ; although it might have for its
 ultimate object the destruction of the Presby-
 terians, as well as of the other religious sects,
 if they did not accede to such terms as should
 be offered to them.

The treachery with which the Presbyterians
 were treated, has seldom been paralleled in
 history. In consequence of the King’s declara-
 tion a bill was brought into the House of Com-
 mons for giving full effect to it, but it was
 thrown out upon the second reading. The
 Presbyterians were then amused with the hopes
 of such alterations being made in the liturgy and
 discipline of the church of England, as should
 comprehend them within the establishment ; and
 negotiations for this purpose were actually go-
 ing on, at the time the Corporation Act was
 passed. The powers given to the commissioners
 appointed under this Act, were limited as above
 mentioned

mentioned to the 25th March, 1663, when it might be reasonably presumed the negotiations for the comprehension would be ended. While the commissions were in force no test was necessary, since they gave unlimited power to place or displace. But as the exercise of an arbitrary power was odious, it was deemed expedient, after the corporations had been well sifted, to fix upon other means of securing them in future.

If the King had been faithful to his engagements, the Presbyterians could have had nothing to complain of from the enforcing of this Act; *they* were not the evil spirits mentioned in the preamble, they had placed the King upon the throne, and were well affected to his Majesty, and the government which they had only just established; so that in this view they were in no danger from the commissioners. Nor was it probable, if the King and his ministers meant fairly, that they could ever be affected by the clause requiring those, who were elected into corporate offices after the 25th of March, 1663, to receive as a qualification the Sacrament of the church of England, for they had not yet separated from this church, and were to be comprehended within it; and the Act only required the Sacrament to be taken

3

according

according to the form, which *should be* established after the comprehension should be agreed on, allowing nearly two years for that purpose. Hence at the time this Act was passed, the Sacramental Test was not in appearance at least calculated for the exclusion of the Presbyterians, or for the security of the church and civil government *against them*; but for the security of the state, and the intended comprehension, against all *other* sectaries.

There is reason to believe that Lord Clarendon, who was then the King's minister, had determined on the ruin of the Presbyterians some time before, and the Crown having gained a vast accession of strength by the Corporation Act, no measures were afterwards kept with them. The memory of their past services, or of the King's solemn promise, no longer operated on the mind of the minister; all hopes of a comprehension vanished, and the Act of Uniformity disgraced the annals of England. By that Act the Presbyterians received a deadly blow; and two thousand of their ministers, who could not conscientiously comply with the terms of conformity, were driven from their livings. "This Bill," as the elegant historian * before

* Hume, Vol. VII. p. 386.

cited remarks, “ reinstated the church in the
 “ same condition in which it stood before the
 “ commencement of the civil wars, and as the
 “ old persecuting laws of Queen Elizabeth still
 “ subsisted in their full rigor, and new clauses
 “ of a like nature were now enacted, all the
 “ King’s promises of toleration and of indul-
 “ gence to tender consciences, were thereby
 “ eluded and broken.”

C H A P. II.

HISTORY OF THE TEST ACT.

THE Minister, the avowed enemy of the Nonconformists, (with whom the Presbyterians are to be ranked after the Act of Uniformity had severed them from the church) on the 5th of May, 1663, procured a bill to be brought into the House of Commons for disposing of all offices military and civil to such persons as had been loyal subjects, and conformable to the church of England^a; but nothing farther appears to have been done upon it. This shews that the design of excluding those who did not conform to the church was formed at an early period. It was projected by the enemies of the Nonconformists to ruin them, and adopted afterwards, as we shall see presently, by their friends, and with their own concurrence, to exclude the Papists.

The history of the Nonconformists during this reign is a series of persecution and oppression. In direct violation of the king's declara-

^a Journ. Vol. VIII. p. 476.

tion from Breda, many new penal laws were enacted against them, and the clergy of the established church warmly entered for some time into the views of the court, and persecuted with all their might those who unfortunately differed from them in opinion. This they were led to do in order to render permanent the monopoly of the church which the Act of Uniformity had given them; and their minds being heated with resentment, and their feelings highly worked up by the remembrance of their own sufferings during the civil war, they shewed in return, as they had found, no mercy. But the King had other objects in view. He was himself secretly, and the Duke of York his brother, and presumptive heir to the crown, was avowedly of the Roman Catholic religion; and by treating the Nonconformists with severity, he hoped to obtain a toleration for those, who professed the same religion with his own. The majority of the House of Commons throughout this reign had a rooted hatred and dread of popery, and although they at first entered into the designs, and gave effect to the resentments of the King and the church, they discovered in a few years the error of their conduct, and the danger to which they exposed the nation. The remainder of this reign therefore was passed in continual disputes between the House of Commons and the Crown, the latter struggling hard
to

to protect the Papists from persecution, the former pressing for further severities against them.

On the 14th of February, 1672, the House of Commons, with a view to unite the whole Protestant interest, ordered a bill to be brought in for the ease of Protestant Dissenters. This bill would have been a great acquisition to them, its object having been not only to exempt them from the penal laws, but also to give them a legal toleration, and to allow them to hold their religious assemblies publicly and openly, upon certain conditions. It passed the House of Commons, but the Lords having made some amendments, a conference took place between the two houses²; and while the Chairman of the Committee who managed it was making his report, the King sent a message requiring the attendance of the Commons in the House of Peers, and then ordered them to adjourn till the 20th of October following³. In the course of the proceedings upon this bill a question was put, that it be given as an instruction to the Committee (to which the bill was referred) that "such as do dissent from the church of England shall be incapable to serve as Members of this House," and

² March 29, 1673.
March 10, 1762.

³ Journ. Vol. IX. p. 266.

it was passed in the negative 163 to 107. This circumstance alone is a decisive proof, that at that time the majority of the House of Commons did not design that Protestant Dissenters should be excluded from all offices. For if that had been their object, can it be supposed, that they would have allowed them to be eligible to Parliament? It appears, however, that a separate bill for that purpose was ordered^s, and afterwards presented, but it was never read, or further proceeded in.

The situation of the country was extremely critical at this time. The King was suspected of Popery himself; his Queen, and the Duke of York, who was to succeed him, openly professed it. The Duke of York, with others of the same persuasion, had the reins of government in their hands. The penal laws were suspended by royal proclamation, for the purpose of protecting the Papists, who enjoyed a full indulgence for their religion, and who possessed many of the great offices of state, and posts of the highest consequence both in the civil and military departments. Moreover, a war was begun to destroy the only Protestant state in Europe, by which England could rea-

^s Journ. Vol. IX. p. 270.

sonably

sonably expect to be supported in defence of her religion and civil liberties.

When the House of Commons met after its adjournment, mens minds were much agitated. The increase of Popery had occasioned a general alarm and consternation throughout the kingdom; and the declaration of indulgence was considered as a serious blow aimed at the constitution, as well as at the church. In this crisis the House of Commons addressed the King against Jesuits and Papists, praying the penal laws might be executed against them, and expressing great concern at their being admitted into places of trust and profit. In consequence of this address the King issued a proclamation, ordering the laws to be put in execution against them; but as he made no answer to that part of the address which prayed their removal from offices, the House of Commons suspended the Money Bill, which was then before them, and brought in the Test Act⁶. The royal assent was reluctantly given to this act; but being presented at the same time with the Money Bill, the King did not chuse to venture to withhold it, but considered the one as the price of the other.

⁶ March 29, 1673.

The Test Act enacts⁷, that “every person
 “that shall be admitted into any office civil or
 “military, or shall receive any pay, salary, fee,
 “or wages, by reason of any patent or grant of
 “his Majesty *, or shall have command or place
 “of trust from or under his Majesty, his heirs,
 “&c. or by his or their authority, or by authority
 “derived from him or them” within England,
 Wales, or Berwick upon Tweed, “or in his Ma-
 “jesty’s navy, or the islands of Jersey and Guern-
 “sey, or shall be of the household, or in the
 “service or employment of his Majesty †, or of
 “his Royal Highness the Duke of York,
 “shall receive the sacrament of the Lord’s
 “Supper

⁷ 25 Car. II. c. 2. s. 1.

* The expression “shall receive, &c.” is explained
 by the 11th Section of the act, which provides, that it
 shall not extend to “make void *any pension or salary*
“granted by his Majesty to any person for valuable and
“sufficient consideration for life, lives, or years, other
“than such as relate to any office, or to any place of trust
“under his Majesty, and other than pensions of bounty or
“voluntary pensions.”

† The words “and his successors” being here omitted,
 some have understood this expression to relate to the
 household and servants of Charles the Second only, and of
 course to have expired with him. It must be admitted,
 that the statute of the 16 Geo. II. c. 31, sect. 3, autho-
 rizes this idea; for in enumerating the offices and persons
 mentioned in the Test Act, it omits those of the household,
 or in the service of the King. But this last-mentioned

“ Supper according to the usage of the church of
 “ England, within three months after his or their
 “ admittance in, or receiving their said authority,
 “ or employment, in some public church, upon
 “ some Lord’s day, commonly called Sunday,
 “ immediately after divine service and sermon.”

Offices * of inheritance created by his Majesty
 or his predecessors are excepted out of this act,

Act is most ignorantly penned, as will be seen presently, and therefore cannot be relied upon as an authority. Two reasons have induced me to consider this part of the Test Act as still in force; 1st, because throughout the whole of the Act against Popery, made in the 4 Jac. (c. 3), the words “ and his successors” are omitted, and yet it was solemnly determined in a subsequent reign, that the Act remained in force, and did not expire with the death of the King; 2dly, by the 30 Car. II. stat. 2, sect. 9, the sworn servants of the King and Queen, and their successors, were required to make and repeat the declaration against Popery, which was by the same Act imposed as a Test upon the Members of both Houses of Parliament. This latter Act was repealed by the 2 Geo. II. c. 31. sect. 9, by which, from the enacting part, but more particularly from the preamble, it appears that the legislature thought the Test Act was still in force, and that the sworn servants of the then King, and his successors, would be still obliged to qualify as required by the Test Act for those of Charles the Second. It is a matter of little consequence either way, for most of the persons *in the King’s household, and in his service*, are included within the other words of the Act.

* Sect. 11.

the persons intituled to them appointing deputies, who are to qualify, and to be approved by the King. ¹ Non-commissioned officers are required only to subscribe the declaration appointed by the act. ² And it is expressly declared not to extend to "high constables, petty constables, "tythingmen, headboroughs, overseers of the "poor, churchwardens, surveyors of the high- "ways, or any like inferior civil officer, or to "any office of forester, or keeper of any park, "chace, or warren, or game, or of bailiff of "any manor or lands, or to any like private "offices, or to any persons having only the be- "fore-mentioned or any the like offices."

Every person not having taken the oaths and the Sacrament as prescribed by this Act ³, is incapacitated from holding the office or employment, "or any matter or thing aforesaid, or "any profit or advantage appertaining to them," and such office and employment is rendered void. Besides, if any person shall, after the times limited by the Act ⁴ are expired, "execute "any of the said offices or employments, with- "out having qualified as required by it, and be- "ing thereupon lawfully convicted upon any in- "formation, presentment or indictment, in any "of the King's Courts at Westminster, or at

¹ Sect. 15.² Sect. 17.³ Sect. 4.⁴ Sect. 5.

“ the assizes, he shall be disabled from suing or
 “ prosecuting any action or suit in course of law,
 “ or in any Court of Equity, or to be guardian
 “ of any child, or executor or administrator of
 “ any person, or capable of any legacy or deed
 “ of gift, or to bear any office” within England,
 Wales, or Berwick upon Tweed, and shall forfeit 500l. to be recovered by him or them that shall sue for the same.

The preamble states the design of the Act to be “ for preventing of dangers which may happen from Popish Recusants, and quieting the minds of his Majesty’s good subjects,” and the most virulent enemies of the Nonconformists have not dared to affirm, that those who proposed it, had *their* exclusion from offices for their object. In truth, the circumstances before related do not admit of such a supposition. They were at that moment in the highest favour with the House of Commons, from their having declined to accept of an unconstitutional toleration offered by the King’s Proclamation, in direct opposition to several Acts of Parliament. While the Test Act was in agitation, their conduct attached the House still more strongly to their cause, for they refused to listen to the artful insinuations of the Court party, who endeavoured by promises of favour, to allure them to oppose it. In answer to these insidious attempts, Alderman

Love

Love *, who was avowedly a Dissenter and one of the Members for the City of London, declared

* Of Mr. Love, we have no account but what may be collected from the Debates and Journals; from them he seems to have been a person of considerable consequence among the Dissenters, and a zealous partizan. In the Debate on the second reading of the Bill for exempting his Majesty's Protestant subjects, dissenting from the Church of England, from the penalties of certain laws, Mr. Love said^a, " I had the honour to sit here in the Long Parliament, and it was then the wisdom of the House *to see whether we were all Protestants*, by ordering all to receive the Sacrament. I could not, and disobeyed the order, and they named me for one that did not; but there were many pieces of bread thrown under the table not received. Said a Gentleman, I am afraid he has some Popish principles; he has been long beyond sea. Sir Thomas Clifford fell upon me then." In 1661, the House of Commons^b ordered that every Member should receive the Sacrament at St. Margaret's Church, and appointed Commissioners to certify for each that attended. Mr. William Love was reported to the House, with other defaulters. The others had further time given, " but as to Mr. Love, the House being much unsatisfied with the matter and manner of his excuse, resolved upon the question, that the said Mr. Love be suspended from sitting in this House until he shall communicate, and bring certificate thereof, from the said Commissioners, according to their former order." In 1669, Mr. Love took an active part in opposition to the Conventicle Bill^c, and tendered a proviso, in substance,

^a Grey's Deb. Vol. VIII. p. 217.

^b Journ. Vol.

VIII. p. 247. 289.

^c Grey's Deb. Vol. I. p. 228.

ed in the debate, that it was his wish that "an
 " effectual security might be found against
 " Popery, and that nothing might interpose till
 " that was done: when that was over, the
 " Dissenters would try to deserve some favour,
 " but at present they were willing to lie under
 " the severity of the laws, rather than clog a
 " more necessary work with their concerns."
 In this declaration Mr. Love spoke not only his
 own sentiments, but those of the Dissenters in
 general; and without their assistance it is highly
 improbable that the Test Act could have been
 passed.

Whether the Dissenters upon this occasion acted
wisely may be disputed; that they acted *generously*
 in thus disdaining the offers of the Court, and pre-
 ferring a continuation of their sufferings under
 the penal laws, to an illegal exemption from them,
 no one can deny. They cordially united even with
 those, who had persecuted them without mercy,

that the Teachers of the Nonconformists, taking the oaths
 of allegiance and supremacy, and subscribing the XXXIX
 Articles, might, by the allowance of a Justice of the Peace,
 teach, the doors being open, and at the time of divine
 service. This clause probably gave the hint for some of
 the provisions in the declaration of indulgence, and it seems
 to have been closely followed in the Toleration Act.

in repelling the attempts of the Crown to destroy the civil and religious liberties of their country. In such a cause they counted for nothing the temporary deprivation of their rights as Citizens, nor esteemed any risk too great, although by preserving a bare neutrality, they might have insured to themselves the peaceable exercise of their religion.

The effect produced by the Test Act was as great and as immediate as its most sanguine friends could have expected. The Duke of York resigned his office of Lord High Admiral, and Lord Clifford, with other Roman Catholics high in office, followed his example; but so much care had been taken that the Dissenters should be excluded from all share in the Administration of Government, that there is not the smallest trace preserved in history of even *one* of their number being turned out of office in consequence of it.

It is well worthy of our notice, that all the exceptions contained in the Test Act ⁴, and all the alleviations of its general effects, were inserted by the House of Lords. To them it was owing, that Constables and other inferior officers, not qualifying, were exempted from the

⁴ Lords Journ. Vol. XII. p. 567.

enormous penalty of 500l. and the consequent disabilities. The Act says, "every such office, &c. shall be void." The Lords proposed to make the *grant* of every office void; but it was opposed by the Commons, who observed, that "some offices pass by *admission*, and they would not have *Papists* admitted to any." In this observation, that "some offices pass by admission," the Commons were perfectly right, for the Lord High Chancellor of Great Britain is invested with his office by the bare delivery of the Seals, and some other great officers of State are admitted in the same manner. The Lords attempted to throw an obstacle in the way of prosecutions by giving one moiety only of the penalty to the informer, and the other moiety to the King, but the Commons would not consent "because of the trouble and charges of the prosecution." The Lords also endeavoured to limit the Act, by proposing that it should extend only to *public* offices; but the Commons, determined to make it as comprehensive as possible, would not admit of the alteration.

C H A P. III.

HISTORY OF ATTEMPTS TO REPEAL, ALTER,
EXPLAIN, OR ENFORCE THE CORPORATION
ACT AND TEST ACT.

S E C T. I.

In the Reign of Charles II.

THE House of Commons met, after their long adjournment, on the 20th of Oct. 1673, and felt a grateful sense of the obligations the nation was under to the Dissenters for the security obtained both for the Church and State, by their conduct respecting the Test Act. A Bill ' was ordered in " for a General Test, to distinguish " between Protestants and Papists, *and those* " *who shall refuse to take it be incapable to enjoy* " *any office, military or civil,* or to sit in either " House of Parliament, or to come within five " miles of the Court, and a Committee appointed to prepare it." I cannot find any further account of this Bill in any of the Histories of the Time ; but from the above title, or rather instruction to the Committee, its object appears to have been, to fix upon some general Test for

¹ Com. Jour. Vol. IX. p. 284.

admis-

admission to offices, which should exclude the Roman Catholics, but should not affect Protestant Dissenters. The Test then in agitation was probably the same as was proposed in the next Session, and as was afterwards made the qualification for sitting in either House of Parliament. If this Bill had been carried through the House, it cannot be supposed that it would have left the Test Act unrepealed; for why add another qualification to that, which was universally acknowledged to be sufficient for its purpose, and stronger than any other that could be devised? There were sufficient reasons to exchange it for one less odious and less unjust. This Bill was first mentioned on the 30th of October, but the King found the temper of the House so exceedingly hostile to the Duke of York and the Roman Catholics, and so strongly disposed to favour the Dissenters, that he deemed a prorogation necessary, and put an end to the Session on the 4th of November, the House having sat only fifteen days. By this step, the Bill for ease of the Dissenters, which was under consideration when the King adjourned them, was lost; for during the short space of time just mentioned, the intended marriage of the Duke of York to the Princess of Modena, and the Bill for a Test to distinguish between the Dissenters and Papists, which

which might be considered as a debt of honour, occupied the whole attention of the House.

The Parliament assembled in January, 1673; on the 21st of ² that month, the friends of the Constitution introduced again the Bill for a Test to distinguish between Protestants and Papists. Its title was now so altered, as to shew that the Bill was meant to encourage the prosecution of the latter, as well as to protect the former*. The Test proposed by this Act ³ was a declaration against Popery, similar to that which was afterwards required as the qualification for a Seat in Parliament. It was read twice and committed ⁴, but was lost by a prorogation notified only the day before that appointed for receiving the report of the Committee. In this manner the King frustrated, for the second time, the good intentions of the House of Commons towards the Dissenters, and at the distance

² Journ. Vol. IX. p. 296. ³ Chand. Vol. I. 197.

⁴ 24 Feb. 1673.

* Ordered, That a Committee be appointed for the preparing one or more Bill or Bills for a general Test, to distinguish between Protestants and Papists, and to prevent the danger and further growth of Popery, and for a more easy and speedy conviction of Popish recusants, and those who shall refuse to take it be incapable to enjoy any office military or civil, or to sit in either House of Parliament, or to come within five miles of the Court.—21 Jan. 1673. Journ. Vol. IX. 296,

of

of one hundred years their descendants have to complain that, to the disgrace of their country, they are still involved with the Papists in one common incapacity. Hard has been the lot of the Dissenters! They were persecuted by a King who had solemnly pledged himself to give them indulgence; and were deprived of the rights of Citizens, in a crisis of public danger, by a House of Commons who had every favourable disposition towards them. When the same House of Commons attempted to remove that temporary mark of reproach, the same King prevented it; and they have been ever since unjustly excluded from all offices, except on terms which most of them cannot conscientiously comply with, through the opposition of a Church which owes its present existence to them,

After the House of Commons had been thus prevented from extending the benefits of a legal and *complete* toleration to them, the Dissenters were reduced to a miserable condition. The King had cancelled the Declaration of Indulgence, and they were left, as before it was published, exposed to all the severities of the penal laws, accompanied with the exclusion contained in the Test Act; but there was this further alteration in their situation, that their conduct had firmly rivetted in the mind of the King, that enmity to their principles, which he had inherited from
his

his father, and had broke out against them before upon various occasions. He took care for the remainder of his reign that they should feel the rod of persecution, and when the Commons pressed to have the laws against Papists enforced, they were always executed at least with an equal degree of severity against the Dissenters. Their conduct throughout their sufferings would have done honour to the primitive martyrs, neither menaces nor stripes could compel them, nor promises nor acts of favour allure them to desert the cause of a country which had cast them off as citizens; but regardless of their own ease and interest, they were foremost to resist the usurpations of the Crown, even when they had found by experience that no other power could protect them from persecution.

It is not my intention to enter further into the history of the Dissenters, than is immediately connected with the Sacramental Test. I shall therefore only observe in general, that the disposition of the House of Commons which passed the Test Act, and was dissolved in 1678, continued to the last favourable in the highest degree to the Nonconformists, and that one of the concluding acts of their political life was to provide a Test, which should allow Dissenters to sit in
either

either House of Parliament, but should exclude the Papists.

The heats occasioned by the Bill of Exclusion continued to the end of this reign, and three successive Parliaments were dissolved to prevent its taking place. In the year 1680, a feeble effort was made to comprehend part at least of the Dissenters within the national church, but the Bill for that purpose was afterwards dropped for one to relieve them from all the penal Acts, which, by an extraordinary piece of political legerdemain, was not to be found, when it was to have been presented for the royal assent. At this period the resentment of the clergy of the church of England against the Dissenters broke out afresh, and the King used every means in his power to sow the seeds of discord between them. The friends of the Dissenters being still the majority in the House of Commons, brought in a Bill to repeal the Corporation Act¹, which was read a second time and referred to a committee. While this Bill was depending, another came down from the Lords², entitled, "An Act for distinguishing Protestant Dissenters from Popish Recusants." This

¹ Com. Journ. Vol. VI. 692, 696, 697, 700.

² Lords Journ. Vol. XIII. 709.

probably

probably might be similar to what had been agitated in 1673, and for reasons given at large by Dr. Furneaux³, may be reasonably presumed to have had for its object the repeal of the Test Act. It does not appear that there was any opposition to either of these Bills, but all proceedings upon them were put an end to by the sudden prorogation of Parliament. The House of Commons, gaining a few minutes previous notice of the King's intention to prorogue them, contrived in a hasty manner to pass some resolutions on the state of the nation, and in favour of the Dissenters*. These resolutions, made by the second House of Commons, after that which passed the Test Act, are an honourable testimony of the merits of the Dissenters, and shew that the services they had done their country were not forgotten. The

³ Furneaux's Letters, p. 182, note.

* 6 Nov. 1680, Resolved nem. con. That it is the opinion of this House that the Acts of Parliament made in the reigns of Queen Elizabeth and King James against Popish Recusants, ought not to be extended against Protestant Dissenters.—Com. Journ. Vol. IX. 647.

10 Jan. 1680, Resolved, That it is the opinion of this House that the prosecution of Protestant Dissenters upon the penal laws, is at this time grievous to the subject, a weakening of the Protestant interest, an encouragement to Popery, and dangerous to the peace of the kingdom. Ibid. 704.

Parliament was soon after dissolved by proclamation, and the Dissenters left for the remainder of this reign to the mercy of the King and the Church. Under their afflictions, they had this consolation, that they were supported by the best friends of the constitution, and were persecuted by—the men, who brought Russell and Sydney to the scaffold.

Before I close the history of this reign it may be necessary to observe, that certain Commissioners named in a statute ¹ for raising a supply in the 31st year of the reign of Charles the Second, are expressly declared not to be under any necessity to qualify themselves for the execution of their office according to the provisions of the Test Act.

S E C T. II.

In the Reign of James II.

TH E persecution of the Dissenters under the penal laws, continued for about a year after the death of Charles the Second, but during the residue of the short reign of

¹ 31 Car. II. c. 1. Gib. Cod. Vol. I. 658.

James II. they enjoyed the peaceable exercise of their religion. The King's power to dispense with the laws was declared legal by ten out of the twelve Judges, and the Dissenters found an asylum from their persecutors in the bosom of the prerogative. The church of England, which had basely deserted them in their adversity, was now shaken to its foundation, and the constitution was totally subverted. In this extremity they did not forget the precarious tenure by which they held an indulgence, but preferred the chance of obtaining a legal toleration for their religion, to servile dependence on the will of a prince. They therefore entered cordially into the plan for the Revolution, which without their assistance could never have been effected. Their meritorious conduct and sufferings, through the reigns of those misguided Monarchs, Charles II. and James II. gave them a right, at that auspicious æra, to expect every mark of favour from their country. The church in particular had owed its preservation to them, at a time when, could they have been either seduced or intimidated by the Court only to relax somewhat in their principles, they had no reason to doubt that they might have enjoyed the full exercise of their religion.

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S E C T.

S E C T. III.

In the Reign of William III.

WHEN William III. was called to the crown of England by the best of all titles, the voice of the people, he exerted every nerve to destroy the religious distinctions among them, and to obtain a repeal of those acts which unjustly excluded the tried friends of the constitution from offices.

On Feb. 28, 1688-9³; the Earl of Nottingham moved in the House of Lords, for leave to bring in the Toleration Act. This motion was received with great applause, and on the 11th of March⁴ a bill was read the first time for uniting their Majesties Protestant subjects; the object of which was a comprehension of the Presbyterians. On the 14th of March⁵, in consequence of the King's pleasure signified in council, a Bill was presented to the same House, and read a first time, for the abrogating of the old oaths of allegiance and supremacy.

³ Lords Journ. Vol. XIV. 134.⁴ Ib. 145.⁵ Ib. 148.

On the 16th of March*, and while all these Acts were depending, the King came to the House of Lords to give the royal assent to the Bill for annulling Lord Russell's attainder, and in a speech addressed to both Houses of Parliament, he said, " Now I have the occasion
 " of coming hither to pass this Bill, which I
 " hope will be for all our safeties, I shall put
 " you in mind of one thing, which will con-
 " duce much to our settlement, as a settle-
 " ment will to the disappointment of our ene-
 " mies. I am with all the expedition I can,
 " filling up the vacancies that are in offices of
 " trust by this revolution. I hope you are
 " sensible there is a necessity of some law to
 " settle the oaths to be taken by all persons
 " to be admitted to such places. I recom-
 " mend it to your care to make a speedy pro-
 " vision for it; and as I doubt not but you
 " will sufficiently provide against Papists, so I
 " hope you will leave room for the admission
 " of all Protestants that are able and willing
 " to serve. This conjunction in my service
 " will tend to the better uniting you among
 " yourselves, and the strengthening you against
 " your common adversaries."

* Lords Journ. Vol. XIV. 150.

The Bill for abrogating the old oaths, was afterwards read a second time¹, and referred to a select committee². This committee proposed a clause to take away the necessity of receiving the sacrament to make persons capable of holding offices, which was referred to the assistants of the House to draw up³. When this clause was, on the 21st of March, reported to the House, it was disagreed to⁴. On the 23d of March⁴ the friends of the Dissenters moved, that a clause should be inserted as a rider to the Bill, to make persons capable to be admitted to any office or employment, who within

¹ Lords Journal, Vol. XIV. 153.

² Ibid. 154.

³ Ibid. 156.

⁴ Ibid. 158.

* The following protest was entered. 1. Because a hearty union amongst Protestants is a greater security to the church and state, than any Test that can be invented. 2. Because this obligation to receive the sacrament is a Test on Protestants, rather than on Papists. 3. Because so long as it is continued, there cannot be that hearty and thorough union among Protestants, as has always been wished, and is at this time indispensably necessary. 4. Because a greater caution ought not to be required from such as are admitted into offices, than from the members of the two Houses of Parliament, who are not obliged to receive the sacrament to enable them to sit in either House. It was signed by the Lords North and Grey, Chesterfield, J. Lovelace, Delamer, Grey, Vaughan, Stamford, and P. Wharton.

¹ Lords Debate, Vol. II. 358.

one year next before, or within one year next after their admission, should receive the sacrament according the usage of the church of England, or not according to the usage of the church of England in any Protestant congregation, provided a certificate was delivered of their having received the sacrament under the hands of a minister, and two other credible persons of such Protestant congregation, and proved by two credible witnesses on oath. But this clause met the same fate with the former. The protest made upon this occasion, is well worthy of perusal, but is too long for this place.

The proceedings in the House of Lords related only to the Test Act; the reason of which seems to have been, that it was the intention of the court to get the Corporation Act repealed intirely, and a bill for that purpose was then before the House of Commons. It had been read twice and committed; but the success of the party in opposition to the court in the House of Lords, gave spirits to their friends in the other House, and on April 1, 1689^s, about a fortnight after the above attempt, a motion was made, "That it be an instruction to the

^s Com. Journals, Vol. X. 74.

“ Committee, that none shall be admitted to
 “ any place of magistracy, unless he have with-
 “ in a twelvemonth before received the sacra-
 “ ment according to the church of England.”
 Upon this it was moved by the court party to
 adjourn the further consideration of this mo-
 tion; which being carried by a majority of *ix*
 only (116 to 114,) it was judged impossible to
 carry the Bill through the House, and it was
 dropped. Thus defeated in one great object,
 William did not relax in his endeavours to
 unite his Protestant subjects, but laboured anx-
 iously to accomplish a comprehension of some,
 and a toleration for the rest. But such was the
 temper of the times, that he could not effect
 his design of a comprehension, and with great
 difficulty obtained an imperfect toleration for
 those, who could not conscientiously conform
 to the rites and ceremonies of the established
 church.

After the Revolution, the friends of the new
 government naturally turned their thoughts to
 the securing of it in future against the attempts
 of the Papists, who had had the management of
 public affairs in the last reign, and for this pur-
 pose a bill was brought into the House of Com-
 mons⁶, for vesting the pecuniary penalties in-

⁶ Chand. Debates, Vol. II. 379.

flitted by the Test Act (upon persons, who had
 exercised offices without taking the oaths and
 the sacrament as required by it) in the crown;
 and in the subsequent proceedings on the bill,
 a clause was received for payment of the mo-
 ney into the Exchequer, and for a distinct ac-
 count to be kept thereof. This Bill was op-
 posed step by step in the House of Commons;
 but being considered as part of the supply voted
 for the war, it was successfully supported.
 When it was ordered to be read a third
 time⁷, a rider was offered and rejected, that
 "the Bill should not charge any person, who
 "accepted any office or commission, and ex-
 "ecuted the same without qualifying himself,
 "if the said person did qualify himself as re-
 "quired before the 1st day of August then
 "next." Another clause by way of rider was
 also offered, that the Act should not extend to
 charge any person, who after October 8, and
 before February 13, 1688, accepted any office
 or commission, and executed the same without
 qualifying himself, if such person did qualify
 himself before August 1, then next; and this
 was made part of the bill which was read a third
 time and passed; but was not further proceed-
 ed in.

⁷ Com. Journ. Vol. X. 413.

In this year, 1690, such was the violence of the House of Commons against Papists¹, that a bill was ordered in to explain the Test Act, by providing that a conviction in an action for the 500l. should be a sufficient conviction within that law; in other words, that a recovery in a civil action should operate also as a conviction in a criminal prosecution, and draw after it the horrid disabilities before-mentioned!

In the first Land Tax Act passed in the first year of William and Mary², the commissioners for raising and managing that tax, are exempted from the Test Act, and every subsequent Land Tax Act has had a clause to exempt the commissioners in like manner.

In the General Act for pardon³ passed in the second year of the reign of William and Mary, the penalties of 500l. incurred by any offences against the Test Act are excepted; but in that passed in the 6 and 7 of William the Third⁴, all offences in general against the Test Act were excepted; and so they were in the Act of Pardon of Queen Ann⁵. Two general acts for pardon were made in the reign of

¹ Com. Journ. Vol. X. 411. ² Gibb. Cod. Vol. I. 658. ³ Ibid. 2 W. & M. c. 10. ⁴ 6 & 7 W. III. c. 20. ⁵ 7 Ann, c. 22.

George the First^s, but as I have had no opportunity of perusing them, I cannot state whether these offences are excepted therein or not. In the last General Act for Pardon passed in the 22d year of George the Second^d, they are not excepted, and of course were all pardoned up to that time.

By the 7th section of the Toleration Act⁷, Dissenters chosen or appointed to the office of high or petit constable, church-warden or overseer of the poor, or any other parochial or ward office, scrupling to take the oaths, or to do any other thing required for executing the office, may appoint a deputy who will comply with the laws; provided only that he be approved by such persons as must have approved the principal person.

S E C T. IV.

In the Reign of Queen Ann.

DURING the reign of Queen Ann, the Dissenters found no favour. On the contrary, their spirited efforts in opposition to

^s 3 Geo. I. c. 19. ⁷ 7 G. I. c. 29. ^d 22 G. II. c. 52.
¹ W. & M. c. 12.

the

the prerogative doctrines of the court, and to the project of restoring the Pretender after her decease, marked them out as objects of persecution. The Toleration Act protected them from the penal statutes, by which they had been so severely afflicted; but, as has been observed before, some of their body had been from the first accustomed to receive the sacrament of the Lord's Supper occasionally, according to the rites of the church of England *, and of course were eligible to offices:

“ * As for the occasional conformity, the Lords * do
 “ not go about to excuse or defend it; but they who
 “ have observed the progress of these matters, and have
 “ borne a large share in these controversies, must acquaint
 “ the Commons, that it is no new practice invented to
 “ evade the law; it has been both the principle and
 “ practice of some of the most eminent among the Dis-
 “ senters, ever since St. Bartholomew in the year 1662.
 “ It is known that Baxter and Bates did still maintain it,
 “ and that several books have been writ about it, as the
 “ fiercest of the Dissenters who intended to keep up a
 “ wall of partition between them and the church have
 “ opposed it much; so that party of Dissenters that came
 “ nearest the church, and of whom the greatest numbers
 “ have come over to it, are those that pleaded for it. Nor is
 “ it a certain inference, that because a man receives the
 “ sacrament in the church, he can therefore conform in

* Chand. Vol. III. p. 235. See also Bishop Burnet's speech in 1703. Lords Debates, Vol. II. 56.

to prevent this practice, a bill was brought into the House of Commons, (in 1702 *) intitled, an Act for preventing occasional Conformity, requiring all persons who should accept of offices, not only to take the sacrament of the Lord's Supper, but to conform strictly to the worship of the church of England, during all the time they held them. This act having been proposed

"every other particular; * * * * it does not necessarily follow, that therefore every man who is satisfied with this, should be satisfied with every other part of conformity. There was a very learned and famous man that lived at Salisbury, Mr. Tombs, who was a very zealous Conformist in all points but one, Infant Baptism; so that the receiving the sacrament does not necessarily import an entire conformity in every other particular." Reasons prepared by the Lords for the conference on the occasional Conformity Bill.

King William was at some pains to discover the proportion of Conformists, Dissenters, and Papists; a curious report on that subject is to be found in the Appendix to the second part of Dalrymple's Memoirs, page 12. And it is stated at page 15, in an account of the Province of Canterbury, "That the Presbyterians are divided, some of them come sometimes to church, therefore such are not wholly Dissenters upon the third enquiry." And afterwards it is said, "Of those that come to church, very many do not receive the sacrament."

* In this memorable year the Test Act was introduced into Ireland.

for

for two successive sessions, and dropped after great debates and conferences between the two houses, but was passed in 1711.

In the year 1706, when preparatory to the union between England and Scotland, an act was to be passed for securing the church of England, and which was to be one of the fundamental essential articles of the treaty, and to be unalterable for ever; a motion was made to insert the Corporation and Test Acts, and thus to render them irrevocable by any future parliament; but it was negatived, and a similar attempt in the House of Lords, extending only to the Test Act, met the like fate.

For one circumstance, one only, were the Dissenters indebted to this princess. In this reign was passed the *first act*, by which the time for taking the sacrament, as a qualification for an office, was extended beyond the limits mentioned in the Test Act. In the year 1709 (four years after the union) an Act was passed in favour of Dr. Henry Newton, Doctor of Laws, who is stated in the statute to have been her Majesty's Envoy Extraordinary to the Great Duke of Tuscany; who being appointed in his absence, Master of St. Catherine's Hospital near the Tower, could not qualify himself by receiving

ceiving the sacrament, &c. within three months as required by the Test Act, and it was enacted, that if he should qualify within three months after his return from beyond seas, &c. he should be deemed to have qualified as fully and effectually, as if he had done so within the precise time required by law.

The same exemption from the Test Act, which had been regularly made from the first, in favour of the commissioners of the Land Tax, was by the Land Tax Act passed in the first year of the reign of Queen Ann, extended to the *collectors* and *assessors* employed in execution of it. A similar clause has been inserted in each of the subsequent Acts down to this time.

In the last year of the Queen's reign was passed the Act to prevent the growth of schism, by which certain restraints were imposed on the toleration enjoyed by the Nonconformists. This Act was to have taken place on the very day on which the Queen died, but owing to that fortunate event was never put in execution.

² Gib. Cod. Vol. 1. 658.

S E C T. V.

In the Reign of George I.

AT the death of Quéen Ann the prospect of the Dissenters brightened, and their opposition to the Pretender's claim, which had been a source of misfortune to them in the last reign, gave them a strong claim to favour and indulgence with her succeffor. They were no longer under apprehensions of persecution, and indulged themselves in the pleasing hope of attaining a more enlarged toleration than they had hitherto enjoyed. But the temper of the times was not favourable to them, and the cry of, "*the church is in danger,*" raised in the days of Sacheverel, still echoed through the nation. So prevalent was that cry in the beginning of the reign of George the First, that it required considerable exertions on the part of the Crown, even to secure the Dissenters from personal violence; and it was not till 1718, five years after his accession, that the occasional Conformity and Schism Acts were repealed. In the Bill for the repeal, a clause was inserted in the House of Commons, where the Bill originated, for taking away those sections in the

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Corporation and Test Acts, by which Protestant Dissenters are obliged to take the sacrament according to the usage of the church of England, to qualify themselves for offices: but the strength of the court was overborne by the high church party in the House of Lords, and the clause was there rejected. The repeal of the Occasional Conformity and Schism Acts, was carried with great difficulty.

The favour granted by Parliament to Dr. Newton, may have given the hint on which was framed the first general Act of Indemnity, for those who had omitted to qualify themselves for offices within the times limited by the Test Laws. At that period such an Act, operating like a general pardon, might be necessary to give popularity to the King, who found all parties in a ferment; of late, it has been deemed necessary to pass such Acts annually for other reasons. By 1 Geo. stat. 2, c. 13, sect. 23, all those who ought to have qualified themselves by receiving the sacrament on or before the 1st of December then next, according to the usage of the church of England, were indemnified against all penalties, &c. incurred by any former omission, and were recapacitated and restored; and so were all who had received it since the succession. This was followed by 13 Geo. c. 29, whereby

whereby it was provided, that the Test Act should not extend to persons who were, nor should be on board the fleet of his Majesty, his heirs or successors, or in his or their service beyond the seas, at such time as any office was granted, &c. to them, so as they should within three months after their return to *Great Britain* receive the sacrament, &c. as required by the Act, &c. All persons theretofore on board the fleet, and beyond sea, were also indemnified on receiving the sacrament, on the last day of Michaelmas Term, 1727.

By the law of England the computation of time is by lunar months; and the fourth section of this Act made the first alteration of the word of the Test Act, for the three months within which the sacrament is there required to be received, having no words of description annexed, must be taken to mean lunar months; but by this section they are declared "to have been meant, and shall be construed in future to mean, three *calendar* months."

In this reign too a material alteration was made in the Corporation Act; for, as we have observed before, by that Act the election of any person to a corporate office, who has not received the sacrament according to the rites of

the church of England within twelve months next preceding such election, was void ; in consequence of which, many inconveniencies had arisen. For example, it had actually been resolved in more than one case (though the contrary doctrine had been laid down in others) that if a man had obtained judgment in a suit in an inferior court, it might be reversed, if it should be afterwards discovered that the court had been held before an officer not qualified according to this Act: for the office being void by this default, the judgment was had before a person who had no jurisdiction, and so was no judgment at all. It is needless to say, that this created great confusion both in corporations, and private property.—To prevent this in future, it was enacted in 1718 ⁷, that all members of corporations, and all persons then in actual possession of any office within the Corporation Act, should be confirmed in their respective offices, notwithstanding their omission to take the sacrament according to the rites of the church of England as required by that Act, &c. and the Act goes on, “ nor shall any person or persons who shall be hereafter placed, elected, or chosen, in or to any of the offices aforesaid, be removed by the corporation or otherwise

⁷ 5 Geo. I. c. 6. sect. 3.

“ prosecuted for or by reason of such omission;
 “ nor shall any incapacity, disability, forfeiture
 “ or penalty be incurred by reason of the same,
 “ unless such person be so removed, or such
 “ prosecution be commenced within six months
 “ after such person’s being placed or elected
 “ into his respective office as aforesaid; and
 “ that in case of a prosecution, the same be
 “ carried on without wilful delay.”—By this
 Act, which is still in force, a corporate office held
 by a person who has not received the sacrament
 within twelve months next preceding his elec-
 tion, is not altogether void as the Corporation
 Act provided, but voidable only for six months
 after his election, in case of a removal or of a
 prosecution commenced within that time; but
 if an unqualified corporator is allowed to remain
 unmolested in office for six months, he has then
 as complete a right, as if he had been properly
 qualified at first.

S E C T. VI.

In the Reign of George II.

OUR late excellent Monarch George the Second, possessed the true spirit of charity for those who differed from him in opinion in religious matters *; yet from a variety of concurrent circumstances, which need not be enumerated here, no material alteration in favour of the Dissenters, except as to the limitation of time, was made in the test laws during his reign. In 1731, the Dissenters of Liverpool determined to apply for the repeal of them. Their resolution was well conceived, for they intended that the application should be made when the Parliament was drawing to a close; and they hoped that the influence of the Dissenters throughout England at the approaching general election, might induce the Minister to court them, and so give them a chance of success. They corresponded with the city of Bristol upon the subject, and with the assistance of that

* He put a stop to a prosecution in the ecclesiastical court against Dr. Doddridge, for setting up an academy at Northampton, “warmly declaring on the occasion that, *during his reign, there should be no persecution for conscience sake.*”—Orton’s Life of Doddridge, p. 251, 252.

city, roused their brethren in London, and in other parts of the kingdom, into activity. A committee was appointed in London to conduct the application, and at the end of 1732 *, every thing was concerted and arranged; but the committee deeming it *an unfit time* to proceed, the design was then laid aside. The Minister found means to prevail upon the committee to delay the application to Parliament from time to time, till having secured the interest of the Dissenters at the general election, he no longer thought it necessary to amuse them.

The new Parliament met in June, 1734, and on the 12th of March, 1735-6, Mr. Plummer moved in the House of Commons for leave to

* The righteousness of Test Laws was now discussed in form by the accurate Bishop Hoadly, and the principles on which they were defended in a *religious* light so effectually exposed and disgraced, that even the abilities of the inimitable Sherlock were found unequal to the task of supporting them.—Preface to the first edition of the Confessional, p. 51.

Upon this occasion, among the writers in favour of the Test were Bishop Sherlock, Bishop Gibson, Bishop Warburton, (as he was afterwards made) Sir Archer Croft, &c. Against the Test Bishop Hoadly and Dr. Sykes of the church of England, and Dr. Chandler and Dr. Harris from among the Dissenters.

* Chand. Vol. IX. p. 161.

bring in a Bill to repeal that clause in the Test Act, which requires those who are admitted into offices to take the sacrament according to the rites of the church of England ; but it passed in the negative, 231 to 123. This motion was seconded by Sir Wilfrid Lawson, and supported by Lord Polworth, Mr. Heathcote, and Mr. Holden ; and was opposed by Lord Noel Somerset, Mr. Danvers, Mr. Shippen, and Sir Robert Walpole, the then Minister, whose speech is preserved in Chandler's Debates. The Dissenters in the country, seeing themselves deserted by the Minister, from whom they expected, and by whom they had been promised support, and displeased with the delays of the committee, which had allowed four years to elapse before the motion was made, and had unwisely let slip the perhaps only favourable moment at the conclusion of the former Parliament, were much dissatisfied with their friends in London. This seems to be perfectly clear, that the committee, if they meant well, were fairly outwitted ; but the Dissenters at a distance not being within the influence of the court, and not feeling so strong an attachment to the Administration, as to make them prefer *its ease* * to their own rights and interest, did

* In a Letter published by the Chairman of the Committee in his own name, in 1732, p. 17, he says, The
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cause

did not scruple to say that they were betrayed.

A similar motion appears to have been made, with like success, on the 30th of March, 1739, when it was negatived 188 to 89. This was the last effort made to restore the Protestant Dissenters of England to their rights as citizens.

On the 18th of April, 1740², leave was given to bring in a Bill “to obviate doubts
“how far persons acting under certain charters
“from the Crown or other powers, were obliged
“to qualify themselves, by taking and subscribing
“the several oaths and tests established by
“the several statutes now in force for those
“purposes.” What the object of this intended Bill was I know not, but it was never presented.

cause needs no lie to support it, nor can be advantaged by it; if it did, I abhor the maxim of doing evil that good may come of it, and would be far from practising it; but will ever strive to keep in view the honour of religion, the public peace, the welfare of the nation, the ease of his Majesty’s administration, and, in *subordination to these*, the interest and rights of Protestant Dissenters.

² Com. Journ. Vol. XXIII. p. 523.

In the year 1747 ⁴, an Act passed repealing the old rates upon houses, windows and lights, and imposing new ones; and the *commissioners* for carrying that Act into execution are exempted from the Test Act; but the *collectors* and *assessors*, not being mentioned therein, must receive the sacrament according to the rites of the church of England, as required by that Act.

The greatest acquisitions of the Protestant Dissenters during the reign of George II. were the different Indemnity Acts. By the first of them ⁵ persons beyond the seas, admitted to offices, were allowed four months after their arrival in England to qualify themselves, and afterwards, in 1736 ⁶, that time was extended to six months.

The Indemnity Act of 1736 mitigates the effect of the Test Act, but not of the Corporation Act, and gives further time to persons to qualify till the 1st of August in that year; and qualifying on or before that day, they are indemnified from all offences against the Test Act up to that day. The Indemnity Act passed in 1743 ⁷ is more comprehensive, and includes the

⁴ 20 Geo. II. c. 3. sect. 27.

⁵ 2 Geo. II. c. 31.

sect. 5.

⁶ 9 Geo. II. c. 26.

⁷ 16 Geo. II.

c. 26.

Corporation Act as well as the Test Act. From that period down to the present time, they have both been constantly mentioned in the Indemnity Acts, which have passed almost annually ever since, as matters of course. At the passing of the Indemnity Act in 1736, the Legislature seem to have felt anxiety lest the liberty they had taken with the Test Act should occasion any alarm; for it is expressly provided, that all the powers, &c. given by the Test Act should be in full force as if it had been re-enacted, except as to the alteration of time made by that Act.

By the 16 Geo. II. c. 31. it is provided, that all persons who shall have omitted to qualify for offices, shall by qualifying on or before the 31st of December then next, be recapacitated and indemnified. By the 3d section all the persons included in the Test Act, except "persons in the household, or in the service or employment of his Majesty," who are not mentioned, "shall receive the Sacrament of the Lord's Supper, according to the usage of the church of England, within six months after his or their admittance in or receiving their authority and employment, in some public church, upon some Lord's day, commonly called Sunday, immediately after divine service and Sermon." And by section

tion 4. all and every person or persons aforesaid, that shall neglect or refuse "to receive the Sacrament of the Lord's Supper, *within the time, and at the places aforesaid, according to the direction of this Act,*" shall be liable to and incur the penalties and disabilities provided in the Test Act. The alteration made by these clauses is called in the preamble, "An Amendment" *of the Test Act* "by enlarging the time." But it is so inaccurately penned, that the enacting part is more adapted to create a new Test, enforced by the same penalties and disabilities as are found in the Test Act, than to amend the Test Act by merely enlarging the time.

The history of public affairs from the year 1740, to the death of George II. is, without taking into consideration the divisions which prevailed among the Dissenters, a sufficient apology for their silence upon a subject so important to them. Until the dissolution of the Parliament, in which the majority against their application had been so great, they could have no reasonable hopes of success. And for the remainder of this reign, affairs of infinitely greater consequence than their grievances occupied the time of his Majesty and his Ministers. They had to resist the open attacks of the Pretender from abroad, and the secret machinations

evinuations of his adherents at home; they had to crush a rebellion, and to carry on two wars against the most potent nations in Europe. Public affairs thus circumstanced, the Dissenters adopted a generous line of conduct. Their zealous adherence to the House of Hanover, and their steady attachment to the constitution of their country, forbade them to think of their own interest, while the existence of the one and the rights of the other were equally in danger,

S E C T. VII.

In the Reign of George III.

OUR present gracious Monarch George III, ascended the throne in the year 1760, and from that time an unaccountable torpor has seized the Dissenters. I will neither vindicate their silence upon the subject of the sacramental test for so long a period, nor attempt to assign the motives of it. The state of public affairs at his Majesty's accession seemed to point out the moment for success. A King, who "born" and educated in this country gloried in the "name of Briton," beginning his reign with the most brilliant successes in war, and giving
to

to his subjects shortly afterwards the blessings of peace, could not fail to attain popularity; he stood deservedly high in the opinion of the public, and the government in his hands acquired a stability and strength, the want of which had much obstructed the success of the Dissenters under his illustrious predecessors. His present Majesty is known to possess favourable dispositions towards those who dissent from the establishment; for in this reign, Nonconformists of several denominations, have received by turns emanations of royal favour. Thus *Poper*y has been established in Quebec; and the Roman Catholics of England, as well as those of Ireland, have been relieved from some incapacities and some penalties, which were so severe, that every benevolent heart must rejoice in their removal. In this reign too, the Ministers of the Protestant Dissenters in England, have been allowed the enjoyment of their toleration upon terms much more enlarged and liberal, than those granted at the revolution; and the repeal of the Test Act in Ireland has shewn, that the Sacramental Test is not a *necessary* bulwark for the protection of an Episcopal church.

The only alteration which has been made in the Test Laws since his Majesty came to the throne, has been *not in favour of, but against* the

the Dissenters. For through the inattention of their friends in the House of Commons, the modern Indemnity Acts differ materially from those passed in former reigns. In those former Acts it has been observed, that by taking the sacrament at some future day, all omissions up to *that day* were rectified; but the later Acts of Indemnity specify a future day, and any person qualifying on or before that day, is exonerated from all penalties and incapacities incurred, not prior to that day (as it was in the last reign) but *before the passing of that Act* of Parliament. Nor let this be esteemed a trivial distinction, for in last Easter Term, a corporator of the borough of Bridgnorth, was in consequence of it, removed from his office, by a judicial proceeding.

C H A P. IV.

PRESENT STATE OF THE LAWS RESPECTING
THE SACRAMENTAL TEST, AS APPLIED TO
OFFICES.

HAVING brought down to the present time the history of the Sacramental Test, considered as a qualification for admittance to offices, I shall in a few words state the law as it *now stands* upon that subject.—The Corporation Act has been wholly repealed or altered; and by the 5 Geo. I. c. 6. §. 3. the election of a person to a corporate office who has not received the sacrament according to the usage of the church of England, within twelve months preceding such election, does not make the office absolutely void, but *voidable* only, in case he is prosecuted within six months afterwards; but if he is allowed to continue in office peaceably during that time, his election is valid, exactly as if he had complied with the requisitions of the Corporation Act at first.

The

The Test Act also has undergone various alterations; but taking the 16 Geo. II. c. 30 according to the intent of the legislature, as an enlargement only of the time mentioned in the Test Act, it is required, that persons *resident in Great Britain*, should within *six* months after their admittance to any office, or their receiving any authority or employment, take the sacrament according to the usage of the church of England, in some public church, on some Lord's day, immediately after divine service and sermon; and that persons beyond sea at the time of their admittance to any office, or their receiving any authority or employment, should qualify in like manner within *six* months after their return to England, by the 9 Geo II. c. 26*. Persons being in the household, or in the service

* In order to make these two statutes consistent with each other, I have been forced to suppose the 16 Geo. II. to be confined to persons resident in Great Britain; but the words of it are general, and require *all persons* accepting of any office to take the sacrament *within six months after admission*, in some public church; this must often be impossible as to persons beyond the seas, and is inconsistent with the 9 Geo. II. which gives liberty to persons beyond the seas to qualify *within six months after their return to England*, unless the former Act is construed, as in the text above, to extend only to persons resident in Great Britain. If it should be thought, that my construction

vice or employment of his Majesty, who do not happen to fall within the other words of the Test Act, must qualify as originally, within three months after they are admitted.

With respect to the prosecution of offences against the Test Act, there is no limitation of time.

struction is not well founded, and that these Acts are inconsistent with each other, the consequence is, that the former is repealed, and the best servants of the state, fighting its battles and risking their lives for its benefit, are left exposed to the peril of incurring the dreadful penalties inflicted by the Test Act.

C H A P. V.

GENERAL OBSERVATIONS ON THE OFFICES
AND PENALTIES MENTIONED IN THE COR-
PORATION ACT, AND THE TEST ACT.

I SHALL now proceed to make some comments upon the offices included within the Test Acts, and the penalties and disabilities incurred by offenders against them.

That the Sacramental Test is required as a qualification for admission to such offices only, as cannot enable their possessors to injure the government either in church or state, and so can be no security to either, will be shewn hereafter. At present, we shall confine ourselves to *absurdities* of another nature.

In the Corporation Act, all mayors, aldermen, recorders, bailiffs, town-clerks, and common councilmen, are included by name; and then come words as general as can be devised, taking in all persons having any office of magistracy, or place, or trust, or other employment, relating to or concerning the government of any city, corporation, borough, cinque port,

and their members, or other port towns in England, Wales, or Berwick-upon Tweed. These words heretofore have been construed (by several determinations of the House of Commons on controverted elections) to comprehend the free or common burgesses of corporations, who had no immediate concern with any place, or trust, or employment, relating to or concerning the government of the place in which they were entitled to that privilege, but who claimed a right to vote in the elections of magistrates, and of the representatives in parliament. But a more liberal construction has taken place in later times, and it is now settled by a series of determinations, that a free burgess or common freeman, need not receive the sacrament as a qualification to enjoy the privileges annexed to that situation.—So that this absurdity now takes place in corporations, that a Protestant Dissenter, who scruples to receive the sacrament according to the usage of the church of England, is only *partially* incapacitated; he is a good citizen, as to some points, but not as to all; he may elect a mayor, but cannot be one; and he may not only vote for a Member of Parliament, but may be chosen to represent a borough in which he could not execute the meanest corporate office.

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By the law of England, if the member of a corporation refuses to take upon himself any office to which he is duly elected, he is punishable by information or indictment; nor could he before the Toleration Act have excused himself by saying that he was not qualified to execute it, from not having received the sacrament within a year preceding his election. That would have been to set up his own crime as a defence; for the canon law (confirmed by statute) requires every man to receive the sacrament, in a church, at least once in every year.—This was productive of great hardships to the conscientious Dissenters in many parts of the kingdom, particularly in corporate towns, where the *inhabitants* were incorporated, and eligible to the different offices; as is the case at Leeds and Newark. If a Dissenter rendered himself obnoxious to his powerful neighbours, it was an easy matter to punish him beyond all the common penalties for nonconformity, by electing him into the office of mayor or alderman, and if he refused to serve, punishing him for the refusal; and if he served without taking the sacrament, punishing him by virtue of the Corporation Act with loss of his office, and by virtue of the Test Act (which extends to corporation offices) with

the disabilities and penalties there mentioned.*
This was the lot of severity and injustice dealt

out

* Lord Mansfield, speaking of these hardships when the case of Mr. Evans was before the House of Lords, expressed himself in the following happy strain of eloquence : —What bloodshed and confusion have been occasioned from the reign of Henry IV. when the first penal statutes were enacted down to the Revolution in this kingdom, by laws made to force conscience. There is nothing certainly more unreasonable, more inconsistent with the rights of human nature, more contrary to the spirit and precepts of the christian religion, more iniquitous and unjust, more impolitic, than persecution. It is against natural religion, revealed religion, and sound policy.

Sad experience, and a large mind, taught that great man, the President de Thou, this doctrine; let any man read the many admirable things, which, though a papist, he hath dared to advance upon the subject, in the dedication of his history to Henry IV. of France, (which I never read without rapture) and he will be fully convinced, not only how cruel, but how impolitic it is to persecute for religious opinions. I am sorry that of late his countrymen have begun to open their eyes, see their error, and adopt his sentiments: I should not have broke my heart, (I hope I may say so without breach of christian charity) if France had continued to cherish the Jesuits, and to persecute the Huguenots. There was no occasion to revoke the edict of Nantes; the Jesuits needed only to have advised a plan similar to what is contended for in the present case; make law to render them incapable of offices; make another law to punish them (for it is admitted on all hands, that the defendant in the cause before your Lordships is profane for taking the office upon him :) if they accept, punish them; if they refuse, punish them; if they say

out to the Nonconformists; for at that time Nonconformity was treated as a crime. The Toleration Act made a considerable alteration in favour of the Dissenters, and not only exempted them from all penalties, but took away every thing criminal in their not conforming to the church of England. In consequence, it gave them a right to excuse themselves from serving corporate offices, by pleading that they were Protestant Dissenters, and could not conscientiously conform. This was not, however, so understood till lately; for even Lord Chief Justice Holt, and a majority of the Judges of the Court of King's Bench, were inclined to hold, that the Toleration Act only exempted them from pe-

yes, punish them; if they say no, punish them. My Lords, this is a most exquisite dilemma, from which there is no escaping; it is a trap a man cannot get out of; it is as bad persecution as that of Procrustes: if they are too short, stretch them; if they are too long, lop them. Small would have been their consolation to have been gravely told, The edict of Nants is kept inviolable, you have the full benefit of that Act of Toleration; you may take the sacrament in your own way with impunity; you are not compelled to go to mass. Was this case but told in the city of London as a proceeding in France, how would they exclaim against the jesuitical distinction! And yet in truth it comes from themselves; the Jesuits never thought of it; when they meant to persecute, their act of toleration, the edict of Nants, was repealed.—Appendix to Furneaux's Letters to Judge Blackstone.

nalties

nalties, and of course, that the crime of being Dissenters, could not justify their refusal of corporate offices; and in the late case of Mr. Evans, one of the Judges declared himself to be of that opinion.

In 1702 it was moved in the House of Commons, that the Committee on the Occasional Conformity Bill should have power to receive a clause for exempting Dissenters from such offices as could not by law be executed without receiving the sacrament, according to the usage of the church of England. This seems to have been just and equitable, and by the late decision in the House of Peers, we are authorized to say, was no more than the Corporation Act had done with respect to offices in corporations before; but such was the virulence of the High Church party, that the clause was negatived. In the House of Lords this clause was added as one of the amendments to the Bill, and sent to the Commons; but after the Bill had been long the subject of dispute between the two Houses, it passed without this clause.

The Dissenters having now the authority of an oracle of English law, and of both Houses of Parliament against them, quietly submitted for a long series of years to the persecution and oppression of their enemies. They were nomi-

nated to offices, because it was known, that they would not qualify to execute them; and bye-laws were made in corporations to punish them by penalties, and to enrich the body at large at their expence. By such illegal exactions the expence of building the Mansion-house belonging to the city of London was chiefly defrayed; and this sumptuous palace, raised out of a persecution unauthorized by law, will for ever be a reproach and shame to the city in which it is erected, and to the country which could permit such injustice to pass unnoticed.

At length this system of oppression was put an end to. An action was brought by the Chamberlain of London against Allen Evans, Esquire, for the penalty of 600*l.* for refusing to serve the office of Sheriff of the city of London, which he demanded under a bye-law made about the time the Mansion-house was built; but the House of Lords, to which tribunal it was carried in the last resort, determined unanimously in 1762, that the Dissenters were excused from serving corporate offices, where they could not conscientiously take the Sacrament, as required by the Corporation Act and Test Acts. Upon that occasion Lord Mansfield immortalized his name as the friend of religious liberty, and asserted with irresistible eloquence and strength of reasoning the rights of mankind. Mr.
Evans

Evans survived this decision but a week, though the proceedings had lasted some years.

Were other laws wanting, the Test A&t (or the A&ts founded upon it) extends to offices in corporation as well as others, for the expression there used is "all persons admitted, &c. into any "office or offices civil or military," or "that "shall have command or place of trust from "or under his Majesty, or by his authority, *or* "*by authority derived from him*;" and it has been doubted, whether the Censors of the College of Physicians, chosen by that body, by virtue of a charter from the crown, were not obliged to take the sacrament. When that question was before the Court of King's Bench, Lord Chief Justice Holt, whose name will be mentioned with reverence as long as the law of England shall exist, was of opinion that the Test A&t extended to them.

The Test A&t does not include ecclesiastical offices. They are protected only by the 1 Geo. st. 2. c. 13. whereby clergymen are required to qualify themselves in such cases by taking the oaths; but they are not required to receive the sacrament, as in the case of civil offices. The consequence of this is curious enough, for no security is given to the church that the offices

belonging to it shall not be held by Nonconformists, while those with which the church has no concern can be possessed by those only who have received its sacrament. A clergyman who, upon his entering into the church, has signed the 39 Articles, may afterwards be a bishop upon easier terms than a corporal in the army can be made a serjeant; to be the register of a prelate, a less strict test is required than to be an ordinary exciseman.

Such offices of inheritance as were existing when the Test Act passed, are expressly excepted out of it; but all created subsequent to that time, or rather subsequent to the first year of the reign of George I.³ fall within the general provisions. These offices are transmissible from father to son, and are considered as a species of private property; yet a Dissenter who succeeds to them is obliged to receive the sacrament. If he cannot conscientiously do it, either from his general dislike of the rites of the church, or because he is not (as he thinks) in a fit state of preparation for it; or if from the whim of the clergyman he is refused access to the altar, the office is lost. Here he is in the hands of

³ The 1 Geo. I. 2 c. 13. s. 18. has incidentally extended the indulgence (alluded to here) to all offices of inheritance created before that time,

the Ecclesiastical Courts; for if he happens to be excommunicated by them during the time limited, no clergyman will dare to give him the sacrament. Moreover, as the office comes to him by inheritance, and no entry or act of his is necessary to give him possession, the penalty may be incurred before he even knows that the office belongs to him.

The words of the statute "that shall have command or place of trust from or under his Majesty, or by his authority, or by authority derived from him," are very comprehensive. What is a place of trust? It is not an easy matter to give a definition, but the term imports a place, to the holding of which some personal trust and confidence is annexed; perhaps the term was used here in contradistinction to any office of burden, such as are mercifully excepted out of the statute, viz. those of high constables, petty constables, tythingmen, headboroughs, overseers of the poor, churchwardens, surveyors of the highway, or any *like* inferior civil office. By that exception offices looked upon as burdensome, and such as all men would wish to avoid serving, Protestant Dissenters are enabled to hold, and if put into them may be forced to execute. Surely it would have been fair, if they were to be excluded from offices of trust,

that

that they should have been relieved from those of burden also. But the members of the church of England secure to themselves a monopoly of all those places accompanied with trust or profit; and leave the Dissenters to take their turn in those which all wish to be exempted from. If they are good citizens to one purpose, why not to another? if they can make good high constables or churchwardens, why may they not make good corporals in the army, or tidewaiters? Yet Mr. Neale has justly observed, that a Dissenter, without qualifying himself by taking the sacrament of the church of England, cannot be even an exciseman, a custom-house-officer, or a tidewaiter! And the exception of noncommission officers in the navy, shews that those of the army are within the Act*.

A vast

* On the 26th of October, 1666^a, a committee appointed to receive information of the insolency of the Popish Priests and Jesuits, and of the increase of Popery, and to consider how the same may be suppressed, &c. reported several resolutions as the foundation of an address to the King: one of them was this; " That the commissions of the musters be commanded and enjoined, upon penalty of losing their places, not to permit any officer or *soldier* to be mustered in the service or pay of his Majesty, till he or they shall have taken the oaths of supremacy and allegiance respectively, and received

^a Com. Journ. Vol. VIII. p. 641.

A vast variety of occupations and offices fall within the provisions of this Act. The gradations are almost infinite between the Lord High Chancellor of Great Britain, and the humble bug destroyer † to his Majesty's household.

"*the sacrament of the Lord's Supper according to the laws and usage of the church of England.*" On the 28th of February, 1672 ^b, an address was ordered to be prepared to be presented to his Majesty, for suppressing the growth of Popery, and to be drawn up on the subject matter of the address passed at the time the above vote was made; and on the same day the Test Act was ordered to be brought in, and was referred to the same committee. In the address was a clause formed upon that just cited, exactly the same with respect to officers, and differing only in this, that "*every soldier serving at land, shall take the said oaths before his first muster, and receive the sacrament in such manner before his second muster.*"

If it is recollected that this address was preparing at the same time with the Test Act, and by the same committee, and was in truth the foundation of it, it may perhaps be doubted whether this Act was not meant to take in not only all the officers of the army, but the *common soldiers* also. That noncommission officers of the army are included, appears from the Legislature having found it necessary to insert a clause to exempt noncommission officers in the sea service.

† Upon consulting the Red Book, I find this officer's name is now omitted in the list of the royal household; but there is a *mole-taker* and a *rat-catcher*, either of whose names might have been inserted in his room.

^b Com. Journ. Vol. IX. p. 259.

The Postmaster General is in a civil office, and has authority derived from the King; so that the proprietors of the mail-coaches throughout the kingdom, having places of trust under him, might, perhaps, if the Act was put into strict execution, be obliged to receive the sacrament according to the rites of the church of England, before they could enter upon their respective employments. But it might admit of doubt, whether the Act does not go even beyond this; for there is no saying to what extent the expression of places of trust *had by authority derived from his Majesty* may be construed to extend; for it is not confined to persons holding such place from those having authority *immediately* from the King, but might be construed by some to go to any length, even to servants and assistants. However this may be, we may venture to congratulate a country on the wonderful uniformity which takes place as to the employments within this Act, when not even a bug can be destroyed within the purlieus of the royal household but by the hallowed fingers of a communicant; nor a post letter conveyed to any part of the kingdom by horses belonging to a Protestant Dissenter.

The effect of the Test Act, if carried into full execution according to its letter, might
give

give to those who take the sacrament according to the usage of the church of England, a monopoly not only of all civil and military offices, but of many trades also; for by several late Acts of Parliament, persons are obliged to take out licences to carry on their usual occupations from the commissioners of stamps or excise; such for example is the case of all retailers of perfumery, auctioneers, venders of quack medicines, and persons letting out post horses; and these licences, it might be argued, bring these different persons within the Test Act, for they have places of trust under his Majesty, or from those deriving authority under him. This argument might be supported by the practice of former times, when the taking the sacrament according to the usage of the church of England, was actually insisted upon as a previous qualification to obtain licences to sell ale *.

But

* “ For pray tell me when any Dissenter conforms and
 “ enters into the church communion, is he ever examined
 “ to see whether he does it upon reason and conviction,
 “ and such grounds as would become a Christian concerned for religion? If persecution, as is pretended,
 “ were for the salvation of men’s souls, this would be
 “ done, and men not driven to take the sacrament to
 “ keep their places, *or to obtain licences to sell ale*, (for so
 “ low have these holy things been prostituted) who per-
 “ haps know nothing of its institution, and considered
 “ no

But not to rely upon this merely, there is another reason for supporting the abovementioned persons who are obliged to take out licences, to be within the provisions of the Test Act. For upon the wares sold by each of them there is a duty to be paid, of which they are made collectors, and for which they account with the different boards; and there is no doubt that all collectors of taxes must be qualified according to the Test Act, unless they are specially exempted, as the collectors of the Land Tax always are. It will be curious to see how the advocates of the Sacramental Test will defend this application of it; for if they allow that it would be a great hardship if all men, who seek their livelihood by trades for which licences are necessary, were compelled to take the sacrament in the church of England, they acknowledge that the complaints of the Dissenters are not totally destitute of foundation. If the qualification in question was rigorously exacted, it might be attended with the ruin of hundreds of families; and many Protestant Dissenters, respectable from their situations in life, and carrying on extensive business, might be forced to shut up

“ no other use of it but the securing some poor secular
 “ advantage, which without taking of it they should have
 “ lost.”—*Mr. Locke's Second Letter concerning Toleration*,
 2d Vol. of Mr. Locke's Works, p. 360.

their

their shops, or make shipwreck of their consciences.

In the year 1702, when the Occasional Conformity Bill was under the consideration of Parliament, the Lords among other amendments inserted a clause to exempt from the provisions * of that Act, governors of hospitals, and assistants of corporations, or workhouses for the relief and setting of the poor on work, and for punishing of vagrants and beggars. This clause was meant † to relate only to free and voluntary, and not endowed hospitals. This amendment was disagreed to by the Commons, and at a free conference between the two Houses, reasons were given by each for not giving up their opinions, and these reasons were afterwards reported by the managers of the Commons to the House. They seem to have been highly offended by the liberal conduct and arguments of the managers of the House of Lords, who were the Lord Steward, the Earl of Peterborough, (Burnet) Bishop of Sarum, Lord Sommers, and Lord Halifax; but more particularly with that

* See Chandler's Debates, Vol. III. p. 211, where the reasons of the two Houses, and the report of the conference are collected.

† Chand. Vol. III. p. 242.

of Bishop Burnet², reporting, "that some of
 " the Lords arguments had been so singular, as
 " to defend occasional conformity, and that
 " they were surprized to hear a Prelate speak
 " in defence of such a practice."

It seems that the objections to the above amendment had been treated with ridicule, for the managers in giving the substance of the arguments used by the managers of the House of Peers, reported that as to this clause it had been argued, "that the disagreeing to
 " the clause relating to hospitals and work-
 " houses seems very hard, because it cannot be
 " imagined these men can be hurtful to the
 " government; what hurt can there come from
 " dissenting bread and cheese, or Presbyterian
 " water-gruel?"

But the absurdities already mentioned are not to be compared to one, which, if it exists, affects more particularly the Dissenters. A certain sum of money is annually given by the King, to a number of the most ancient and respectable ministers and laymen of their body, resident in London, to be distributed by them among the poorer ministers and congregations. This annual gift

² Com. Journ. Vol. XIV. p. 183.

is well known by the name of *Regium Donum*. Now it will not be denied that the distribution of this money is a personal trust delegated to these Gentlemen, either by the King himself, or by some person acting in authority under him; and if they are in a place of trust, in either way they fall as fully within the Act of Parliament, as any of the great officers of state, or any of the *little* officers just mentioned. I have never yet heard that any of these Gentlemen have communicated with the church of England within the time limited by law, and I leave to others to imagine the distress which would be occasioned by calling upon these grave and reverend personages to go through the ceremony which the law requires, or the outcry which would be raised with sensible persons through the kingdom, if they should each be sued for the penalty of 500 l. or prosecutions should be commenced to bring upon them the dreadful incapacities inflicted by the Act for their omission.

It has been before observed, that certain offices may be held without taking the sacrament as a previous qualification; but it would puzzle the wisest head to give any good reason why they, and they only, should be excepted out of the Test Act. If a midshipman in his Majesty's

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navy is not in a situation that can be productive of danger to the church or state, so neither is a serjeant in the army. If a Dissenter can make a good commissioner for the land tax, though he scruples to receive the sacrament according to the rites of the church of England, why should he not be qualified to act as a commissioner in any other department of the revenue? If he may be trusted as a collector or assessor of the land tax, why may he not act in the same capacity as to the taxes upon windows? If a high constable, who, by virtue of his office, can raise the *posse comitatus*, may be trusted without taking the sacramental test, why should it be required from a maid of honour, or a ra-teacher? It will not be an easy task to reconcile to reason and common sense a system of law, whereby a greater security for the civil government and established church is required from the sword-bearer or meanest officer of a petty corporation, than from a Lord of Parliament. But the absurdities arising from the Test Act do not end here.

The horror felt by the House of Commons at the progress of Popery was such, that in the framing of the Test Act they laid aside every consideration, but how they should check it most effectually. Occupied solely with that ob-
ject,

ject, they laid aside the politeness usually shewn to the female sex, and have inserted words sufficiently large to include even *ladies* within its provisions. With difficulty the Lords prevailed upon them to omit the servants of the then Queen's household, which at first were expressly mentioned; but most of the officers of her household, and of every subsequent Queen, are included in the general words, and are required to give proof of the purity of their religious principles by receiving the sacrament of the church of England. From the mistress of the robes down to the necessary woman no mercy is shewn, all must conform to this solemn ordinance; nor is the royal nursery exempted. But this is not the only way in which the ladies are affected by the Test Act; for there are several who enjoy pensions from the crown, and to receive the bounty of their sovereign, they must take the sacrament according to the church of England, for the Act extends to "pensions of bounty, and voluntary pensions." Now, when the terror of Popery is passed away, and men's minds consider the Act, abstracted from those feelings which agitated and alarmed the framers of it, it is not easy to discover how a widow receiving a pension from the crown can thereby become dangerous to the state, or how a disaffected maid of honour,

or bedchamber woman, should put the established church in jeopardy.

No person, says the Act, "shall receive any
 " pay, salary, fee, or wages by any patent or
 " grant from the King," unless he shall take
 the sacrament according to the usage of the
 church of England ! Thus the King is deprived
 of the power of rewarding the meritorious ser-
 vices of a Protestant Dissenter, even when not
 in any public office or place of trust, unless he
 qualifies himself to receive the recompence due
 to him ! After he has performed what he was
 set about, and has executed the commands of
 his Sovereign to the utmost of his power, he
 may be told, "it is true you have done well ;
 " your country is obliged to you ; but the
 " King cannot grant you any wages or salary,
 " because you have not taken the Test within
 " six months after he had employed you in the
 " business." There is an intolerable degree of
 hardship in such a law ; for the Dissenter, being
 in no office when he is employed, and taking
 none upon him, naturally concludes, that it is
 unnecessary for him to comply with the requi-
 sitions of the Test Act ; and yet his having
 done so is the condition on which alone he can
 be entitled to his perhaps hard earned pittance.
 It is worse than an *ex post facto* law, for the
 quali-

qualification may not become necessary until it is impossible for him to comply with it; the six months may be elapsed long before the business is ended or the payment made.

The singular effects of this Act upon the subjects of Scotland are omitted here, but will be considered in their proper place hereafter.

That the Test Act is not put in execution to the utmost letter, is owing not only to the absurdities and hardships which would ensue, but to the liberal spirit of the times, and in some degree to the severity of the penalties, which bear no proportion to the offence they are meant to punish; and it may be laid down as a sound maxim in politics, that laws applicable to ordinary cases ought to be repealed when they become dormant, when the government of a country dare not, or from motives of expediency do not chuse, to put them in execution. The Acts of Indemnity, which pass annually, are now become absolutely necessary for the peace and orderly government of the state, and to save almost the whole nation from penalties and disabilities. Without this annual relaxation of the Test Act, the inconveniencies arising from it must have forced the repeal long ago. The penalties and disabilities that

hang over those who neglect to qualify themselves, are such as humanity contemplates with horror. By the 4th section of the Act, the office is declared void; and by the 5th, if any person neglecting to qualify shall afterwards continue to exercise his office, he is deprived of the right to sue in any court of law or equity; he cannot be guardian to any child, or an administrator or executor to any person; he can neither take a legacy or deed of gift, or bear any office in England, Wales, or Berwick upon Tweed; and he besides forfeits 500 l. to any one who shall sue for the same!

These disabilities and this penalty are not accompanied with any limitation in respect of time, and if the annual Indemnity Acts did not mercifully interfere, a man who had been in office, and neglected to qualify according to law, could never afterwards be safe; for no lapse of time could save him, and he might be persecuted to day for offences committed 50 years ago.

The sum of 500 l. as a general penalty for this offence, is enormous; for even among those who have a right to expect access to the highest offices it would be a very serious fine; but when applied to the vast number of petty officers who come within this Act, it is cruel beyond all bounds.

bounds. Upon these the Legislature might as well have inflicted imprisonment for life at once, for it must operate as such. How can a poor tide-waiter be supposed to raise such a sum? and imprisonment to him is ruin, for he subsists merely on the wages paid for his personal service. To ninety-nine of the officers within this Act out of an hundred, this observation will apply; and is not perpetual imprisonment a punishment somewhat more severe than such an offence deserves? The Legislature have, however, shewn a strong affection to this Act, and even to this penalty, if we may judge from the attempt made in King William's reign to have it levied from all offenders, and paid into the Exchequer; and from its having been excepted out of every general Act of Pardon passed prior to the accession of the House of Hanover.

The immense disparity between the penalty incurred by offences against the Test Act, and that incurred by offences against the Corporation Act, deserves to be particularly attended to. In the latter, it is only an avoidance of the office; in the former, it is the destruction of almost every civil right of the offender; so that considering the Acts as unconnected, a man runs much less risque by usurping the office of

Mayor of a Corporation, than by accepting that of a Tide-waiter. If avoiding the office is the proper standard of punishment, then the disabilities inflicted by the Test Act for this omission cannot be justified; and this absurdity is allowed to remain in the laws of England, that the penalty for accepting the highest offices in a corporation without receiving the sacrament, is not so severe as for the holding the lowest civil office not within one. The history of these Acts gives the true solution of this inconsistency. The Corporation Act was levelled at certain opinions in government, which it was feared might afflict the country with civil commotions; the latter was meant as a temporary expedient to turn certain Papists, who were then in power, out of their places. Two reasons, therefore, may be suggested for the disparity of punishment for the same offence in these two instances. The Test Act was made upon the spur of the occasion; the danger was instant, and the remedy must be immediate. But a stronger reason was given by the House of Lords in the proceedings on the Occasional Conformity Bill: "The Test Act," say they, "was made the more severe, because the crime there is of a mixt nature; *there is an owning an allegiance in another place.*" If then this is the ground of the penalty being thus severe,

it

it must be made out by some new mode of reasoning, that it ought to be inflicted equally on those who do *not* acknowledge an allegiance elsewhere. The equality of punishment where there is a disparity of offence is palpable injustice; and the Legislature having declared by the Corporation Act, that mere loss of office is a sufficient punishment, the Dissenters may complain, that they are not justly dealt with in being thus involved in one common fate with men, whom the Legislature, at least, has considered as more dangerous offenders than they are.

Another argument against the severity of the penalty in the Test Act, arises from the proceedings of the two Houses respecting the Occasional Conformity Bill. Throughout those proceedings the crime of a Dissenter refusing to take the sacrament, was put upon the same footing as occasionally conforming only while he was in office; and we shall find that the House of Commons, notwithstanding the violence of its leaders against the Dissenters, has given a measure of punishment for this offence infinitely less severe than the disabilities and penalty inflicted by the Test Act. * The Commons at

* 3 Chand. Deb. 218.

first proposed a forfeiture of 100l. and 5l. a day for every day that a person in office should be present at any dissenting meeting; and besides, on conviction in any action for these penalties, he was to be disabled from holding the office he had possessed, or any other in England, Wales, or Berwick upon Tweed. This, which is a merciful punishment compared to that we are now considering, the Lords thought too severe, reducing the penalty to 20l. only, attended with loss of office; and giving as a reason, "That the Lords do not take going to a meeting to be *malum in se*, for that the Dissenters are Protestants, and differ from the church of England only in some little forms; and therefore the Lords think loss of office a sufficient punishment, without incapacity."

When this ⁵ Bill was agitated for the second time between the two Houses, the Commons had reduced the penalty to 50l. with the loss of office only; this was still objected to by the Lords ⁶, and when at last the Bill was passed in 1711, the penalty was reduced to only 40l. but was accompanied with disability to hold any office in England, Wales, and Berwick upon Tweed.

⁵ Chand. Deb. Vol. III. p. 281.

⁶ 10 Ann, c. 2.

Heavy as was this disability, it was *all* that was ever asked for by the enemies of the Dissenters, who displayed through the whole of the proceedings, such a bitterness of spirit against them, as to shew that the Toleration Act alone was their protection against a revival of all the penal laws. But this punishment, however severe and grievous, is not to be compared to what is found in the Test Act. For by that Act, the holding a place without having taken the sacrament, deprives a Dissenter of the rights belonging to him, not only as a citizen, but as a *man*. The rights of suing, of being executor or administrator, or of taking a legacy or deed of gift, may be considered as of a merely political nature, derived from his relation to the state; but the right of a father to the care and education of his child, boasts a higher source; it is one of those natural essential rights which no community can destroy or affect; it existed long before a community was formed, and will continue to exist although none such should ever be known again among mankind. If the state has authority to deprive a man of one of these rights for any offence, it may deprive him of all; if it is justified in forbidding him from being the guardian of his child, because he has held an office without receiving the sacrament according to the usage of the church of England,

land, there is no saying where it may stop. The principle may be extended to all the other rights which are natural and unalienable; it may deprive him of the means of subsistence; and, like the tyrannical edict to which Jane Shore is reported to have fallen a sacrifice, forbid any person to relieve his wants, and leave him a prey to famine and despair!

Before the severity of the penalty inflicted by the Test Act is dismissed from our attention, it ought to be observed, that its cruelty is much heightened from the rigour with which it was exacted. Until the 13 Geo. I. no circumstances of alleviation could prevent its being incurred to the utmost extent; neither illness nor absence was any excuse; but the penalty fell with unremitting severity on the innocent and the guilty. Nor is an omission to receive the sacrament through mistake or inadvertence, treated in a more merciful manner; and the most steady member of the church of England may unwittingly feel the weight of penal laws intended to operate against Popish Recusants. The Commons in their reply to the reasons of the Lords in the debates on the Occasional Conformity Bill, allude to such an instance, when they say, that “ a very
“ violent prosecution had been known on the
“ Test Act within these few years, against an
“ Alder-

“ Alderman of Worcester, a constant con-
 formist, *only upon a nicety*, and when there
 “ had been *no fault in the party*.” Is it not
 shocking to reflect, that where there has been
 no fault in the party, but merely *through a
 nicety*, a person may be deprived of all his
 rights as a citizen, and of those which are still
 more dear to all men, those of a parent also!
 But was it not more cruel still, that if a person at
 a distance from England, in the service of his
 country, should have been honoured with his
 Majesty’s favour, and appointed to an office, he
 might have fallen within the same disabilities;
 when perhaps it was not possible for him to re-
 turn to England within the limited time, without
 disobedience to the orders of the Crown? The
 inconveniencies arising from this rigour, occasion-
 ed the Act of Parliament in favour of Dr. New-
 ton, who happened to be appointed to an office
 while abroad in the Queen’s service; and that
 Act being requisite in his case, shews sufficiently
 to what terrible lengths these Test Laws might
 have been carried. This rigour has been
 abated by several Acts of Parliament, but all
 the alleviations would prove only an ineffi-
 cacious remedy for these evils, if the liberal
 and enlarged spirit of the times did not co-
 operate to prevent prosecutions. Wonderful is
 the effect of that spirit! It controuls all laws,
 and

and gives security and peace where the Legislature holds out every temptation to prosecute and oppress. A prosecution for the offence of not receiving the sacrament as required by the Test Laws, is a thing unheard of, although offenders may be found in every village, and the law gives a penalty of 500 l. to the informer! Nay, it holds out even greater advantages to the unprincipled and wicked; for the debtor of an offender against the Test Laws may, by prosecuting, recover the penalty of 500 l. and acquit himself of the debt by incapacitating his creditor from suing!

P A R T II.

C H A P. I.

OF THE INJUSTICE OF A RELIGIOUS TEST
IN GENERAL, AND A QUALIFICATION FOR
OFFICES.

THE objects of the Corporation Act were the exclusion of evil spirits, and the perpetuating the succession in corporations in the hands of persons well affected to his then Majesty and the established government: the object of the Test Act was the preventing of dangers from popish recusants. The mode devised for these purposes was the same, viz. the exclusion of all persons from offices who did not take the sacrament according to the rites of the church of England. The Protestant Dissenters certainly were not the persons described by the latter Act, nor was it intended that the Presbyterians should be affected by the former. The Dissenters therefore in general, and the Presbyterians

terians in particular, are justified in complaining of the hardship of these Acts being extended to them, and in requiring that they may not be left under restraints and marks of reproach, which were meant for others.

The advocates for retaining the Test Laws in their present form, must contend, that for the safety of the state, or church, or both, it is absolutely necessary to exclude Protestant Dissenters from public employments; and that the sacramental test is the proper medium to accomplish this. If they make out these points to the satisfaction of the Legislature, the intended application to restore them to a capacity to be admitted, ought to fail of success; if they do not, there is no pretence for opposing it.

Man in a state of nature is possessed of many rights, some of which he gives up entirely, and in others he suffers himself to be controuled when civil communities are formed. Of the latter sort the right of self-defence is an instance; it is never wholly lost, but is suspended only so long as the good of the public requires, and as the community at large can afford protection to the individual. Whenever the danger is so pressing and immediate that no assistance can be derived from the society, the law of England recognizes

recognizes the revival of natural rights, and declares that force may be repelled by force, and that the death of the aggressor shall be justified.—But there are other rights which no man can resign, even to a civil society. No man can subject his opinions in religious matters to the magistrate, for he is intrusted by the great Author of his being with the exercise of his mental faculties ; and his conduct in this trust, in a state of society as well as of nature, is merely a personal concern between each individual and the God who made him. The right of private judgment never could be surrendered to the magistrate, because it never could be within his jurisdiction.—“ Conscience is not “ controulable by human laws, nor amenable “ to human tribunals. Persecution, or attempts to force conscience, will never produce conviction, and are only calculated to “ make hypocrites or martyrs¹.” Such was the animated language of the great advocate for the rights of private judgment, who, to the honour of this country, has long filled one of the highest offices of the law. It is the duty of every man to make choice of those religious opinions, which, after a full and free investigation, his conscience declares are right, without

¹ See Furneaux's Letters, 277.

regard to the systems and opinions of others, whether mere individuals or persons intrusted with the power of the state. The interference of the civil magistrate in matters thus excepted out of his jurisdiction, would be a breach of the trust which alone he lays claim to, and an unjust perversion of the power virtually delegated for other purposes.

Toleration then is not a matter of favour, which government may withhold or grant at pleasure; for if liberty of conscience be a right essential to human nature, it follows of course, that the magistrate ought to leave the members of the community in this respect free and uncontrouled; and that his only duty on this subject is to protect each individual in this right against the usurpations of others.—To obtain a competent idea of the rights of mankind in a state of society, let us conceive a number of persons, each thinking for himself in matters of religion, united into a political community, to protect themselves against injury. This is the object of all political societies, and whether there ever was in fact an original compact or not, the rights of the subjects and the duties of the magistrates are exactly the same, as if they had been founded upon one. The right of protecting their persons and property from the at-

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rights of others they give up, but the right of private judgment never was nor ever could be surrendered to the controul of the magistrate. This is the true idea of civil government, and of its powers.—For directing the affairs of the society, proper offices must be instituted and competent salaries annexed. To these, as endowed out of the public stock, and as affecting the happiness of all, all subjects have an equal right to be admitted, notwithstanding differences of opinion in religious matters, which affect neither their attachment to the society at large, nor the objects for which it was instituted.

If in process of time it is found, that punishments are insufficient to restrain individuals from injuring one another, the impressing upon the minds of the subjects of the state lessons of religion and virtue, naturally offers itself as the most easy and efficacious mode of compassing this important object, and a religious establishment is formed. A question may arise as to the system of religion which ought to be preferred; but the necessity of having but one religion established being supposed to be admitted, it is the duty of the magistrate to fix upon that which the majority profess. This is the idea of an establishment, as given by a dignitary of the church

church of England, the liberal and enlightened Paley!—"A religious establishment," says he, "is no part of Christianity, it is only the means of inculcating it. It cannot be proved that any form of church government was laid down in the Christian, as had been in the Jewish scriptures, with a view of fixing a constitution for succeeding ages; and which constitution consequently the disciples of Christianity would every where, and at all times, by the very law of their religion, be obliged to adopt."—"The authority therefore of a church establishment is founded on its utility, and whenever upon this principle we deliberate concerning the form, propriety, or comparative excellency of different establishments, the single view under which we ought to consider any one of them is, that "of a scheme of instruction;" the single end we ought to propose by them is "the preservation and communication of religious knowledge." Every other idea and every other end that have been mixed with this (as the making of the church an engine or even an ally of the state; converting it into the means of strengthening or of diffusing influence; or regarding it as a system of regal in opposition to popular forms of government) have served only to debase the institution, and to

"introduce

“ introduce into it numerous corruptions and
“ abuses.”

In this view of an establishment there is nothing to authorize the infliction of penalties on those who do not believe its doctrines or conform to its discipline. After the magistrate has established that sect of religion, of which the majority of the subjects approve, and has provided for its maintenance, he has done his duty. He ought not to shew a partiality to any one sect above another, but ought to take all equally under his protection ; he ought to make it a principal part of his care to guard the inherent right of private judgment from violation ; and as he ought not to persecute any set of men for their opinions, so neither ought he to allow any others to do so.

Instead of being treated as delinquent outcasts, the Dissenters, from an establishment thus formed, have in one view an increased pretension to indulgence. Being forced to contribute money towards the support of the religious opinions of others, they are intitled, if not to compensation, at least to forbearance in return.— It may happen also, that their brethren of the establishment may be desirous to avail themselves of their services in offices to which they

have the means of electing them; and why should these electors be deprived of this liberty of choice, or the society at large of the advantages that might follow from it?

If this reasoning be just, the whole code of penal laws against Nonconformists was made up of violations of the most sacred rights, and of unjust exertions of the state to usurp the cognizance of matters, over which it could have no jurisdiction.

Civil incapacities, therefore, are in the nature of penalties; and to inflict them without cause is manifest injustice. If I am a good member of the civil society, I stand upon an equal footing with every other member considered as such; and it is no offence to government, if I behave with duty and respect to it, that I worship God in a manner somewhat different from my neighbour; nor is it any reason to exclude or disable me for the service or trust for which I am capable.—Incapacities are always inflicted by the laws of England as a punishment for crimes; and the Protestant Dissenters by those laws ought to be no longer liable to *any punishment*, since Nonconformity has ceased to be a crime. This doctrine was adopted by Lord Mansfield, and recognized by the highest

highest tribunal of justice in the great case of Mr. Evans. He there declared, that " the² " case is quite altered since the Act of Tolera- " tion. It is now no crime for a man, who is " within the description of that Act, to say he " is a Dissenter; nor is it any crime for him " not to take the sacrament according to the " rites of the church of England: nay, the " crime is if he does it contrary to the dictates " of his conscience."

But, says Bishop Warburton, " Diversity of " sects can do mischief only by getting into " the administration; to keep them out then " for the reasons above is only a restraint: but " was their civil incapacity extended further, " then it becomes a punishment. But by the " Test Law the incapacity is not further ex- " tended; therefore it is no punishment, but a " restraint only³."

If it is an evil in the opinion of any govern- ment, that a Nonconformist should walk the

² Furneaux's Letters, 263. See too the Lords Pro- test, 1688.

³ Alliance between Church and State, 1st edition, p. 11. N. B. Bishop Warburton had before defined excessive punishment to be " the inflicting of more pain than is ne- cessary to repel an evil."

earth, the infliction, in such case, of death itself, according to these principles, would be only the imposing of a restraint. * The exclusion of Dissenters from offices, according to the Bishop, is only a restraint, because this exclusion is necessary to repel the evil; but if the civil incapacity goes further than mere exclusion, it would then become, according to him, a punishment, and, according to him, indefensible. The misfortune is, that each individual must consult his own conscience, and do what that tells him to be right; and the Bishop has himself no better rule to go by than consulting his own conscience, because ~~he~~ *cannot* give a general standard by which men shall know how far religious opinions, merely as such, are mischievous, or how far their own opinions are better than those of others.—The Bishop thinks the opinions of Nonconformists are productive of mischief only when they are admitted into the administration; and the Roman Catholic thinks they are mischievous at all times and in all situations; and the same principles which authorize the Bishop to exclude them from offices, will justify the latter to burn or destroy them. There are some men too, who may be convinced that the Nonconformists *would* not be inclined to do, and *could* not do any mischief by having free access to all civil offices; and upon
the

the Bishop's principles, such persons must consider the exclusion of Nonconformists as a punishment, because no restraint in their view can be necessary where there is no evil to repel.—The truth is, that false foundations are naturally accompanied by sophistical inferences. No man has a right to meddle with the religious opinions or actions of another, unless they are sufficiently objectionable in a civil view, and inconsistent with the peace of society, supposing no established religion to exist; and religious interference being thus bad and tyrannical in its principle, it cannot be wonderful, that if the doctrines for regulating this interference should be gratuitous and tyrannical also.—The restraints too in question are of the nature of punishments, being deprivations of advantages, or else hardships inflicted on account of particular opinions. Whenever the restraints also are broken through, they are to be followed by excessive punishments, the efficacy of the restraints being always made to *depend* upon such punishments.—If nothing more than what is negative is intended on the part of government, it may reasonably be asked wherefore it is, when the conduct of the party shall have been innocent during his continuance in office, that he should be punished with such horrid penalties as those of being incapacitated for

for suing, receiving legacies, being guardian to his own child, &c. since it would be so easy to affix due penalties to any *specific* and *positive* offences he may have been guilty of, while in office. Even upon Bishop Warburton's own data, nothing more ought to happen to the party, who merely offends by taking the post for which he does not qualify according to law, than losing the post, or (we will allow) forfeiting its profits and some slight mulct in addition. Any thing beyond this is more than mere exclusion and restraint: it becomes vindictiveness, and brings a criminal charge on government, when it is so easy to institute positive *enquiries on this head*, to *prevent* any one from remaining long disobedient to the law in office.

It is with pleasure that I turn from an author, whose principles favour so much more of tyranny, than of christianity, to the respectable Dr. Paley whom I have before cited, and whose sentiments on this subject do him particular honour.—“ Concerning, says he ¹, the admission
“ of Dissenters from the established religion, to
“ offices and employments in the public service,
“ (which is necessary to render toleration *complete*) doubts have been entertained with some
“ appearance of reason. It is possible that such

¹ Paley, p. 581.

“ reli-

" religious opinions may be holden, as are ut-
 " terly incompatible with the necessary func-
 " tions of civil government, and which opini-
 " ons consequently disqualify those who main-
 " tain them from exercising any share in its ad-
 " ministration. There have been enthusiasts,
 " who held that Christianity has abolished all
 " distinction of property, and that she enjoins
 " upon her followers a community of goods.
 " With what tolerable propriety could one of
 " this sect be appointed a judge, or a magis-
 " trate, whose office it is to decide upon ques-
 " tions of private right, and to protect men in
 " the exclusive enjoyment of their property? It
 " would be equally absurd to intrust a military
 " command to a Quaker, who believes it to be
 " contrary to the Gospel to take up arms. This
 " is possible; therefore, it cannot be laid down
 " as an universal truth, that religion is not in
 " its nature a cause which will justify exclusion
 " from public employments.—When we exa-
 " mine, however, the sects of Christianity,
 " which actually prevail in the world, we must
 " confess, that, with the single exception of re-
 " fusing to bear arms, we find no tenet in any
 " of them, which incapacitates men for the ser-
 " vice of the state.—It has indeed been assert-
 " ed, that discordancy of religions, even sup-
 " posing each religion to be free from any errors
 " that

" that affect the safety, or the conduct of go-
 " vernment, is enough to render men unfit to
 " act together in public stations. But upon
 " what argument, or upon what experience is
 " this assertion founded? I perceive no reason
 " why men of different religious persuasions
 " may not sit upon the same bench, deliberate
 " in the same council, or fight in the same
 " ranks, as well as men of various or opposite
 " opinions upon any controverted topic of na-
 " tural philosophy, history, or ethics.

" There are two cases in which test laws are
 " wont to be applied, and in which, if in any,
 " they may be defended. One is, where two
 " or more religions are contending for esta-
 " blishment; and where there appears no way
 " of putting an end to the contest, but by giv-
 " ing to one religion such a decided superiori-
 " ty in the legislature and government of the
 " country, as to secure it against danger from
 " any other. I own that I should assent to this
 " precaution with many scruples. If the Dis-
 " senters from the establishment, become a
 " majority of the people, the establishment it-
 " self ought to be altered or qualified. If there
 " exist amongst the different sects of the coun-
 " try such a parity of numbers, interest, and
 " power, as to render the preference of one
 " sect

" sect to the rest, and the choice of that sect,
 " a matter of hazardous success, and of doubt-
 " ful election; some plan similar to that which
 " is meditated in North America, and which
 " we have described in a preceding part of the
 " present chapter, may perhaps suit better with
 " this divided state of public opinions, than
 " any constitution of a national church what-
 " ever. In all other situations, the establish-
 " ment will be strong enough to maintain itself.
 " However, if a test be applicable with justice
 " upon this principle at all, it ought to be ap-
 " plied in regal governments to the chief ma-
 " gistrate himself; whose power might other-
 " wise overthrow, or change the established
 " religion of the country, in opposition to the
 " will, and sentiments of the people.

" The second case of exclusion, and in which
 " I think the measure is more easily vindicated,
 " is that of a country in which some disaffec-
 " tion to the subsisting government happens to
 " be connected with certain religious distinc-
 " tions. The state undoubtedly has a right to
 " refuse its power and its confidence to those,
 " who seek its destruction. Wherefore, if the
 " generality of any religious sect entertain dis-
 " positions hostile to the constitution, and if
 " government *have no other way* of knowing its
 " enemies

" enemies than by the religion they profess,
 " the professors of that religion may justly be
 " excluded from offices of trust and authority.
 " —But even *here* it should be observed, that it
 " is not against the religion that government
 " shuts its doors, but against those political
 " principles, which, however independent they
 " may be of any article of religious faith, the
 " members of that communion are found in
 " fact to hold."

Supported by this authority, I might here
 close my observations on the injustice of the
 exclusion of Protestant Dissenters from offices.
 This elegant and popular author, has argued
 upon principles somewhat different from those
 I have taken ; but his deductions, as far as the
 present subject is concerned, are nearly the
 same ; for the result of his arguments as brought
 together at the conclusion of his chapter on re-
 ligious establishments is¹, " That a comprehen-
 " sive national religion, guarded by a few ar-
 " ticles of peace and conformity, together with
 " a legal permission for the Clergy of that re-
 " ligion, and a *complete* toleration of all Dis-
 " senters from the Established Church, without
 " any other limitation or exception, than what

¹ Paley, p. 586.

" arises from the conjunction of dangerous po-
 " litical dispositions with certain religious te-
 " nets, appears to be not only the most just and
 " liberal, but *the wisest and safest system* which
 " a state can adopt; inasmuch as it unites the
 " several perfections which a religious consti-
 " tution ought to aim at; liberty of consci-
 " ence, with means of instruction; the pro-
 " gress of truth, with the peace of society; the
 " right of private judgment, with the care of
 " the public safety."

C H A P. II.

OF THE INJUSTICE OF A TEST, WHICH EXCLUDES PROTESTANT DISSENTERS FROM OFFICES.

IT may be said, however, that the restraints imposed by the Test Laws, are not defended as just, but as expedient for the security of the civil constitution, and the established Church.—In answer to this, I will acknowledge, for the sake of argument, that a Test is necessary by which the friends ought to be distinguished from the enemies of the government, and by which its enemies may be kept out of all power. The question then is, are Protestant Dissenters to be considered as enemies? for if they are not, the exclusion of them will even on this ground be unjust, for it cannot be necessary or expedient.—This makes it material to enter into an examination of the civil and religious principles of persons of this description.

The Dissenters of the present day do not contend for establishment, nor is disaffection to the subsisting government in the least connected with any of the religious distinctions among them.

them. Whether the Test is supported as a security to the church or the state, or both, they may boldly assert their claim to be restored to their rights as citizens, as holding opinions hostile to neither. With respect to their sentiments on civil government, they are precisely the same as those which the members of the church of England do or ought to maintain. They profess themselves to be the friends of civil liberty; they assert the principles on which the glorious revolution was founded, and which placed the House of Hanover on the throne of Britain. The charge of disaffection to the present government, is inconsistent with these principles, and unsupported by any part of their conduct. They have run greater risks, and with greater unanimity to establish and preserve it, than any other set of men whatever. During the reign of Charles the Second, the small remains of liberty in England were deposited in a great degree with them, and they watched with anxious care over the charge. They resisted, with effect, the arbitrary designs of Charles, and his unfortunate brother, when their own immediate interest would have led them to an unconditional submission; they joined cordially in the attempts to compass the revolution, and exposed themselves to the resentment of a bigotted princess, and an infatuated

I

ated people, to secure the accession of the House of Hanover. The unkind returns they have since met with from their country at large, have never diminished their attachment to that family, nor damped their ardour in the cause of liberty. In the two rebellions, which had for their object the restoration of the House of Stuart, the Dissenters, without a single exception, proved faithful to the present government; while within the pale of the church were found the zealous champions for passive obedience and non-resistance, and the Stuart race.

It is unnecessary to dwell longer on this part of the subject, for against facts so notorious, it is not probable, that the Dissenters will be accused of disaffection to the subsisting government; more especially as upon a recent occasion, their prejudice in favour of the House of Hanover, carried them to such lengths in support of the prerogative, as to bring upon them the reproach of having, *in one instance*, since the revolution, deserted the cause of civil liberty, and taken part against the constitution.

The words of Dr. Sykes¹ are so applicable to this part of the subject, that I shall make no apology for citing them. After admitting

¹ Reasonableness of applying, &c. p. 19.

that "there ought to be a Test by which the
 " friends may be distinguished from the enemies
 " of the government, and by which the ene-
 " mies of it may be kept out of all places of
 " power and profit," he says, "but then that
 " ought not to be made a Test, which treats
 " known friends and known enemies in the *same*
 " manner, and puts no distinction, or makes
 " no difference betwixt them. The *Protestant*
 " *Dissenters* are known to be as hearty and sin-
 " cere subjects to the king, as any other sub-
 " jects in his majesty's dominions. The Papists
 " are by principle, and therefore always are,
 " avowed enemies to his person and to his
 " government. The *one* are ready always to
 " give, and always do give the strongest evi-
 " dences of their affection; the *other* never
 " do, nor ever will. The *one* therefore has a
 " claim of right to a toleration in its fullest ex-
 " tent and latitude, whilst the other can have
 " no claim of right to such indulgence, in a
 " state where they refuse to give the common
 " evidences of allegiance. A Test therefore
 " which treats these two sorts of men *equally*
 " and in the *same manner*, must be very unfair,
 " and unreasonable, and impolitic."—If it be
 said that the Roman Catholics of the present
 day are well affected to the government, it makes
 the argument still stronger against the Test Act,

for it was made to prevent dangers from persons, who were avowed enemies to the constitution; and it is then unjust, that either they or the Protestant Dissenters should labour under disabilities intended for another description of men.

Among the reasons framed by the Lords¹, in the dispute on the occasional Conformity Bill, (which it must be observed subsisted eighty-four years ago) they say, "The Lords think, that
 " an Englishman cannot be reduced to a more
 " unhappy condition, than to be put by law under an incapacity of serving his prince and
 " country; and therefore nothing but a crime
 " of the most detestable nature, ought to put
 " him under such a disability; they who think
 " the being present at a meeting to be so high
 " a crime, can hardly think that a toleration
 " of such meetings ought to continue long;
 " and yet the Bill says, the Act of Toleration
 " ought to be kept inviolable."—To which the Commons answer, "That he is indeed reduced
 " to a very unhappy condition, who is made
 " incapable of serving his prince and country;
 " but in the present case, our prince and country
 " try would be in a more unhappy condition,
 " to be served by such whose principles, are in-

¹ 3 Chand. Deb. 220.

" consistent

"consistent with the good and welfare of our establishment." So that here the two branches of the legislature, disputing with each other on other points, agree in this, that "he is indeed reduced to a very unhappy condition, who is made incapable of serving his prince and country;" and the reason given by the Commons for contending warmly for severity against the Dissenters is, not that they held political opinions dangerous to the state, but "because they are such, whose principles are inconsistent with the good and welfare of the establishment."

It is not easy to conceive, how the Dissenters can be said to hold principles inconsistent with the welfare of the established church, when they neither wish to become an establishment themselves, nor to destroy that of the church of England.—During the tyrannical reign of Charles the Second, a considerable part of their body hoped for a comprehension; but even then they never entertained a thought of destroying the national church, or of establishing themselves on its ruins. They had given up all hopes of monopolizing ecclesiastical power at the restoration, and only asked afterwards for an equal participation and less severe terms of conformity. One effort only was made for this purpose

pose after the revolution; but the Toleration Act put a final end to all further expectations, of even a participation with the church of England. Protected by that law, the Dissenters have for nearly one hundred years, quietly submitted to a separation from the church, and have expected only a toleration of their religious opinions.

During that period, a great change has taken place in their opinions, with regard both to the doctrines and discipline of the church; and there is not now to be found among them a single person, who either wishes for a comprehension, or believes it to be practicable.—In fact, persecution and resistance to their just requests, are the most successful means for keeping up their numbers; for since they have been allowed the public exercise of their religion, their numbers have much diminished; and some of their best friends dread their success in the present application, lest it should make their declension still more rapid. They are now become so few in number *, that taking them as

* In the reign of James the Second, Mr. Hume says, they did not amount to a 20th part of the people; and by an actual enumeration of the freeholders through the greatest part of England, made in the reign of King William, the proportion of Nonconformists to Conformists, was even then only as one to twenty-two four-fifths.

one aggregate body, the Episcopalians form so large a majority, that their *right* to be the established church cannot be disputed.—The Dissenters do not consider a form of religion, of which bishops make a part as sinful; but, believing that Christ has not imposed upon his followers any form of church discipline, they think that it depends on the civil government of the country to determine, to which it shall give the preference. This opinion is seen with pleasure confirmed in its fullest extent, by a review of the several dominions of Great-Britain, in different parts of which Popery and two *true* * Protestant Religions are established.

The

* This expression, applied to the established religion of Scotland in the Act made in the Parliament of that King for its security, and which was to be one of the fundamental articles of the Union, gave offence to some English Lords; and on the third reading of the Bill for the Union between England and Scotland, a rider was offered in these words^a. “Provided always, that nothing in this ratification shall be construed to extend to an approbation, or acknowledgment of the truth of the Presbyterian way of worship; or allowing the religion of the Church of Scotland to be what it is styled, the *true* Protestant religion.” But the motion that it should be read a second time, was negatived, 55 to 19; and the church of Scotland is now, by Act of Parliament, *the true* Protestant religion as well as the church

^a Lords Journ. Vol. XV. p. 268.

The experience of more than one hundred and twenty years has sufficiently shewn, that the opinions of the Dissenters are not dangerous to the established church in England, and they may appeal to that, as a proof infinitely more strong than the most powerful speculative arguments. They in part preserved that church by their firmness in the reign of Charles the Second, and they were instrumental in bringing about the revolution, when its destruction was nearly accomplished. At the conclusion of the reign of Queen Ann, they also rendered it essential service, by strenuously opposing the intrigues to exclude the present family, and place a Popish prince upon the throne.

of England. Against this *sacrilegious* vote (as it may be thought) fifteen temporal peers, and *only one* bishop protested. The rest of the bishops, we may presume, were satisfied, that the kirk of Scotland was *the true* Protestant religion. This was a great stretch of Christian charity, for till then the Presbyterian religion had never been acknowledged by the church of England to be a true religion. There was a time when each of these churches arrogated to itself a divine origin, and in consequence of that ridiculous claim persecuted the other; but now finding the world grown too much enlightened to give credit to such impositions, they wisely found their claim to public support on the acts of the legislature, not the purity of their descent, and in this instance hold out *the right hand of fellowship* to each other.

C H A P. III.

OF THE INJUSTICE OF A TEST WHICH EXCLUDES THE NATIVES OF SCOTLAND FROM THE OFFICES OF ENGLAND AND GREAT-BRITAIN.

HAVING shewn that the laws of England requiring the Protestant Dissenters of England to qualify for the holding of offices, are unjust, even after admitting that a test may be in some cases highly proper and justifiable; let us examine the situation of another set of men, to whom they are in all circumstances great grievances; I mean the subjects of Scotland.

In the Act of Union between the two kingdoms, the Corporation Act and Test Act are not mentioned, and therefore they remain in full force. There is no sacramental test, however, in Scotland, as there is in England; whence this palpable injustice follows, that a member of the church of England has full and free access to all the offices of Scotland, while a member of the kirk of Scotland is incapacitated from holding one in England, unless he takes the sacrament according to the rites of her established

ed church. This may be called reciprocity with a vengeance, but it is so in the modern acceptation of the word; for the advantage is all on one side.—The same national injustice now exists with regard to Ireland, for there is no religious test in that country.

But the hardship and injustice of the Test Act goes far beyond this with respect to the Scottish nation. By the Act of Union the kingdoms of England and Scotland are incorporated into one, under the name of the kingdom of Great-Britain; and from that time there is to be only one parliament, one privy council, one army, and one navy for both countries. As the Test Act does not extend to the parliament, that is out of the question here; but every privy counsellor, and every officer in the army and navy, is obliged to qualify in England to hold his office. In other words, a Scotchman to be of this privy council, which belongs to his own country as well as to England, or to have a commission in this army, which is raised for the defence of, and is paid by Scotland as well as England, is obliged to receive the sacrament in a foreign church. This is the only instance in ancient or modern history of the exclusion of a free people from filling *their own* offices!—If a sacramental test is really necessary

cessary for the security of an established religion, the kirk of Scotland is unfortunately circumstanced, since for holding any of the offices of Scotland none is required; and for holding those which it has in partnership with England, conformity to *another* church is necessary. When one contemplates the list of the army and navy, and the vast number of natives of North Britain who deservedly hold high rank in it, it is matter of astonishment that a high spirited nation should have so long submitted to such a grievance, and should have permitted fourscore years to have elapsed without a single effort to remove it. The established religion in Scotland must have long felt the effects of a mode of making converts, which has been working silently, but regularly, upon most of the families of consideration and opulence; and which, operating with other causes, may finally sap and destroy it.

It may be said, that the Test Act does not extend to the privy council, the army, the navy, and other offices of *Great-Britain*, but only to the offices of *England*, as a separate kingdom; and this perhaps would be the best way of construing the Act: but the general usage having uniformly been otherwise, and for such a length of time, it will authorize the above observations.

Taking

—Taking for granted that it does not reach the offices of *Great-Britain*, this absurdity will ensue ; that in a country where a sacramental test is deemed necessary for protection of the church, those offices, which almost alone can have the power to do mischief, may be opened to sectaries of all denominations, even Papists ; while those from which nothing can be apprehended, will be confined strictly to Conformists : and a Dissenter or a Papist may be a privy counsellor or a general, while he cannot be a collector of the window tax, or sell a pint of ale.

But how will the advocates for the sacramental test, (still admitting to them the necessity of requiring it for security of the establishment, and arguing from their own principles) justify the claim of the King of England to hold the crown of Scotland ; for if it be necessary for the other officers of the state to be Conformists, ought not the chief magistrate * to be so too ? That the Test should be required from the chief magistrate, seems peculiarly necessary for the security of the church of a smaller state, when united to a larger ; more particularly when he is resident in the larger state, and is a Conformist to its church. To him, if it is ap-

* See what Dr. Paley says on this subject, in the passage cited in p. 100.

plicable with justice at all, it ought to be applied; for his power, backed with that of his other dominions, might otherwise overthrow or change the established religion of the weaker country, in opposition to the inclination of the people.—In this respect, Scotland is singularly unfortunate. It can *never* have a Sovereign of its own religion; for by the Act of Settlement¹, the King of Great-Britain is required, as the condition on which he holds the throne, to join in communion with the church of England, as by law established. So that if he was to visit his northern dominions, he must either be an occasional Conformist, or an episcopal Dissenter there; for his religion is settled by act of parliament.—The safety of the established church of Scotland, although its head is of a different religion and resident in another country; although he presents to vacant Presbyterian livings; and although he fills up all the offices of state, without any Test of the religious principles of those whom he appoints, is a strong proof, that such a test is not absolutely necessary to the existence of an establishment.

¹ 12 and 13 Will. III. c. 2. s. 3.

C H A P. IV.

OF THE INJUSTICE AND HARDSHIPS ARISING
TO THE CLERGY OF THE CHURCH OF EN-
GLAND AND THE COMMUNICANTS, FROM THE
TEST LAWS.

THE sacrament of the Lord's Supper is a matter of a purely religious nature; and the clergy of the established church are so strictly bound down, both by temporal and ecclesiastical laws, not to administer it indiscriminately to all who offer themselves at the altar, that the requiring it to be received as a general qualification for admission to offices is highly unreasonable and unjust. If offices were given only to persons described by those laws as in a state of fitness to receive the sacrament, no difficulty could arise; but if in fact persons are sometimes selected for the execution of civil offices, who must, if they receive it all, receive it unworthily¹, (and so, according to the faith of

¹ The 25th Article of the church says, " Sacraments
" ordained of Christ be not only badges or tokens of
" Christian men's profession, but rather they be *certain*
" *sure witnesses and effectual signs of grace and God's will*
" *towards*

of the church, purchase to themselves damnation;) or if a minister, in obedience to the laws of his church, sanctioned by the state, is bound to refuse such the sacrament, manifest injustice must ensue. It is partial and unjust, on the one hand, to exact that as a qualification from all, which all cannot if they would, or at least without disproportioned risque, comply with; or, on the other hand, to require the general indiscriminate administration of a religious ordinance from men, who are bound by the solemn ties of duty to administer it only to those selected by the laws themselves obey.

The receiving of the sacrament must be according to the rites of the church of England;

"towards us, by the which he doth work invisibly in us; and doth not only quicken, but also strengthen and confirm our faith in him." If the Article stopped here, those who are forced to qualify to hold offices or to escape penalties, might be thankful to a church which gives indiscriminately these *sure witnesses and effectual signs of grace and God's will towards us*, to the good and the wicked; but at the conclusion we are told, that "in such only as worthily receive the same, they have a wholesome effect or operation; but *they that receive them unworthily purchase to themselves damnation*, as St. Paul saith." Is not making the sacrament a test for admission to civil offices holding out to those, who, if they receive it at all, may receive it unworthily, a temptation to purchase to themselves damnation?

and

and by those rites the ministers are required to refuse it to persons of various descriptions; among others, to those not confirmed, or not ready or desirous to be so; to persons belonging to another parish; to those who have done any wrong by word or deed, so that the congregation be thereby offended; to those between whom the minister perceives hatred and malice to reign; and by the Canons of 1603², to those who offend their brethren either by adultery, whoredom, incest, or drunkenness; or by swearing, ribaldry, usury, or any other uncleanness or wickedness of life; and this inhibition extends to those who are common and notorious depravers of the Book of Common Prayer, or of any thing contained in the thirty-nine Articles, or of any thing contained in the book of ordering Priests and Bishops, and to those who have depraved his Majesty's authority in causes ecclesiastical.

To this long list of exceptions, must be added the case of persons *excommunicated*; and when
it

² I separate the offences which exclude from the communion under the Canons of 1603, because having never been confirmed by Act of Parliament, they do not bind the laity; but this clashing of jurisdictions makes it still harder upon the poor clergyman, who is bound to obey the ecclesiastical power, the civil power not having interposed here to release him.

³ Lionel

it is considered for how small a matter this punishment may be inflicted ³, this will be found a dreadful engine of church power, and even of civil malice. It may be incurred by obstinacy ⁴ or disobedience in not appearing upon a citation, or not submitting to penance or other injunctions of the lowest Ecclesiastical Court; those also are excommunicated who even receive the sacrament with persons in that situation, or who shall knowingly give it to any stranger excommunicate. These are causes which may affect even the most regular churchmen;—but before the Toleration Act, when Nonconformity was a crime, there were others more peculiarly grievous to the Protestant Dissenters; for

³ Lionel Copley, Esquire, was excommunicated in the Archdeacon's Court, on the presentment of the Churchwardens in 1664, for not receiving the sacrament in his own parish church, although he shewed that he had received it elsewhere; and the temporal courts refused to grant a prohibition. Hardres's Reports, 406.

Women are within the Test Act, and one was excommunicated in the time of James I. for coming to church to be churched without being covered with a white veil, as directed by the Chancellor of the diocese of Norwich! and upon a certificate of the Archbishop of Canterbury and the Bishops, that this was according to the law of England, a prohibition prayed for to prevent an *excommunicato capiendo* was denied.

⁴ 3 Burn's Ecc. Law, 211, &c.

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this

this censure fell upon persons refusing to frequent divine service established by public authority in the realm of England; and by the Canons of 1603^s, whosoever should separate from the church of England and join together in a new brotherhood, accounting the Conformists to the church profane and not meet for them to join with, was excommunicated *ipso facto*.

Now let us suppose that a good churchman, for some of the above trifling matters, (the chief of which have nothing to do with religious faith or civil loyalty,) is excommunicated, and is appointed to some lucrative office; or which is stronger still, suppose he obtains the office, and is excommunicated afterwards, within six months, and before he has received the sacrament; no clergyman can administer it to him, without incurring the same penalty of excommunication himself; and by not receiving it, he risks the penalty of 500*l*. and the disabilities mentioned in the Test Act, and moreover becomes liable to a prosecution for not performing the duties of his office.

Sir John Read, who does not appear to have been a Dissenter, on the 1st of April, 1617, was,

^s 1 Gib. Cod. 601.

by

by sentence in the Spiritual Court, divorced a *Mensa & Thoro*, and for nonpayment of alimony was excommunicated; the Test Act was passed in the interim, and being afterwards made High Sheriff of Hertfordshire, and still under the sentence of excommunication, and so not in a capacity to receive the sacrament, he took upon him the office, and executed it for three months, and then refused (in order to secure himself from the penalty of 500*l.* and the dreadful disabilities mentioned in the Test Act) to serve any longer. The Judges came soon after to hold the assizes at Hertford, but there was no Sheriff to attend them; upon which he was prosecuted at the suit of the Attorney General in the Exchequer, for not accepting the office; and it was held by the Court, that the party was punishable for not removing the disability, it being in his power to get himself absolved from the excommunication, and he was fined 500*l.*

Assuming then that a clergyman would be justified in refusing to administer the sacrament to a person excommunicated, the situation of some Nonconformists must have been singular enough before the Toleration Act. They must be excommunicated for their nonconformity in some cases, but were excommunicated *ipso facto*

if they separated from the church and joined in a new brotherhood. If one of the Dissenters who had thus separated was appointed to an office, he was incapable of qualifying himself to accept it, because being *ipso facto* excommunicated, no minister would dare to admit him to communion. By his appointment he could not avoid incurring the penalties of the Test Act, for he could not comply with its directions. —In this manner additional inducements were held out to those who would reconcile themselves to the church, and a vast increase of penalties menaced the refractory.

Here contemplating the system of church discipline established in England, and presuming it to be regularly enforced, the man of speculation would be ready to cry out, Happy people, who are all united in opinion, and among whom a virtuous life alone is an introduction to the honourable distinctions and offices of the state! If perfection was ever found on earth, surely on this blest spot it must have fixed its habitation! He would be further confirmed in this opinion, by observing the strictness which pervades our laws, by which a foreigner to become a subject of Britain, must take the sacrament according to the

the rites of the church of England *. If he is not in the state of purity and perfection required by the ecclesiastical laws from all communicants, he is not worthy to be ranked among the immaculate inhabitants of England, nor even with the Presbyterians of Scotland; for to be naturalized as a Scotchman, he must join in communion with the established church of her sister kingdom.—The man who gives up theory for fact, and trusts to speculation only, when practical observation and experience are wanting, would tell us, that in corrupt times we are not to look for a purity unknown even in the golden age. He would tell us, that from the temporal and spiritual jurisdictions being at variance, all virtue is likely to be lost among us; that the clergy not daring to put in execution the laws which they are bound by the most solemn ties to obey, become the instruments of the profanation of the most holy ordinance of their religion; and that open profligacy and

* This is required in order to naturalization by the statute 7 Jac. c. 2. Several attempts have been made in vain to get rid of this absurd law; it was repealed for about three years in Queen Ann's reign, but the cry of *the danger of the church*, obliged the Legislature to re-enact it. It was dispensed with first in the year 1705, when the Princess Sophia, Electress of Hanover, and the issue of her body were naturalized.

infidelity, in defiance of the anathemas of the church, may stalk proudly to the altar, and triumph in the enjoyment of the highest honours and offices of the state.

Many of the causes of exclusion from the communion rest in the discretion of the minister, and it is not probable therefore that they would be often made use of. A sense of duty might impel him on the one side, but self-interest, and a desire to live in peace with his neighbours, would be more powerful incentives on the other. Besides the temporal courts have more than once intimated an opinion, that an action would lie against a minister, who should deny the sacrament to any body, however profligate, or in other respects objectionable, that requested it.—The case of excommunication, (which does not depend on the discretion of the minister,) may be an exception; for in Sir John Read's case, it was taken for granted that he was not in a capacity to receive the sacrament. In this instance at least, the civil rights of the subject are given into the hands of the clergy; and in the others, the clergy are in a pitiable condition. A good man, feeling exquisitely for the interests of religion, is obliged, under the peril of a suit at law, which may bring ruin upon himself and family, to administer the sacrament

ment without reserve to the most profligate unbelievers, and to wretches whose lives are a scandal to human nature ; at the same time that he is solemnly bound, by other ties of duty and office, to exclude them from the altar, and runs the risque of being prosecuted in the spiritual courts for the offence.

Against a system so unjust and so mischievous, so absurd and so severe, the mind of every honest man must revolt ; and the Protestant Dissenters would have presumed, if experience had not shewn the contrary, that the reverend clergy of the church of England would have eagerly seized upon every opportunity of freeing themselves from the charge of double-dealing, and of restoring to its primitive use and original dignity, the holy ordinance of their religion, now left to daily profanation *. There are some

* “ Every one knows there is a church in this town
 “ ludicrously called *The Qualifying Office* ; here they at-
 “ tend, many of them, not as if they were prepared for,
 “ or understood, what they are going to do. Some of
 “ them are sent for out of taverns, or worse places, when
 “ the service is ended ; and then, that the Gentlemen
 “ may not have the fatigue of waiting, and may have
 “ the preference of those who only receive out of devo-
 “ tion, the clerk says aloud, *Gentlemen, you that come to*
 “ *qualify draw near*. Upon this they approach and pay
 “ their fees (which I am told, amount in that church to

some among them who look only to the interests of the religion they profess, and have long lamented that this scandal to their church should continue to disgrace it; but there are others who consider their church too much as a state engine, and an *ally* to the civil government, and who lie under the imputation of preferring in appearance the temporal to the spiritual interests of its members; and of contributing their aid to secure a monopoly of all the civil offices to subjects of one description, even at the expence of the religion they profess.

The kind of arguments I have hitherto used, may possibly make an impression upon some of the former; but upon the latter I cannot hope that they should have any effect. The politician, whether in or out of the church, must be attacked in another way. "Tell me not," he will say, "that the Test Laws are unjust; but shew me that the repeal of them will not endanger the civil government, or the established religion of the country, and that in present circumstances it is expedient." I shall therefore go on to other topics.

"a considerable sum in the year) without loss of time." This was written in 1733, but, to the scandal of religion, *The Qualifying Office* has been open ever since. —Observations on the present Dispute, &c. printed in 1733, p. 18.

C H A P.

C H A P. V.

RELIEVING THE PROTESTANT DISSENTERS
FROM THE TEST LAWS NOT DANGEROUS TO
THE CHURCH, SHEWN FROM THE NATURE
OF THE SACRAMENTAL TEST.

IT has been already shewn, that the modern Dissenters entertain no opinions hostile to the present government, either in church or state, and therefore their free and unrestrained admission to offices could be attended with no ill consequences to either; but admitting, against the fact, that they were the declared enemies of both, it may be important to examine, whether the Sacramental Test, on admission to offices, as now applied, affords any real security against them, or against any enemies of the public.

The Sacramental Test certainly could not have been borrowed from any foreign nation, for it does not appear to exist in any but our own. It seems to have been originally introduced as the best means of discriminating between Protestants in general and Papists; and is found in the penal laws of James the First, as a Test of their religion.—It may indeed have been

been one of the precious remnants of the Star Chamber doctrines; for in the year 1571¹, in the debate in the House of Commons on the Bill to enforce recusants to come to church, a Member proposed, that they should be required also to take the sacrament there, and mentioned that nine of the Privy Council had made a decree in the Star Chamber court, that the Gentlemen of the Temple should receive the communion. The House, satisfied with this authority, ordered a clause to be added accordingly. This precedent was pursued by some Acts passed in the reign of James the First^{*};—but it is probable, that it was introduced

¹ Dewes, 177. 13 Eliz.

^{*} By the 114th Canon made in the first year of the reign of James the First, (1603) all Rectors, Vicars and Curates, are directed to inquire every year, how many Popish recusants there are within their respective parishes, and how many addicted to the Popish religion (who, although they are present at church, yet refuse to become partakers of the sacrament,) &c. So that at this period, it was no uncommon thing for persons addicted to Popery, to conform to all the service of the church of England, except that of receiving the sacrament. Two years afterwards, just after the Popish plot had been discovered, a law against Popish recusants, (3 Jac. I. c. 4.) after reciting that, “divers persons popishly affected do
“nevertheless, the better to cover and hide their false
“hearts, and with the more safety to attend the opportunity
“tunity

duced into the Test Laws respecting officers, from an order of the House of Commons appointing a fast, made on the 9th of November, 1640², (not founded upon any law, but arbi-

trarily to execute their mischievous designs, repair sometimes to church, to escape the penalty of the laws in that behalf provided ;" enacted, that every Popish recusant convicted, or hereafter to be convicted, which heretofore *had conformed himself*, or which *should thereafter conform himself*, and *repair to the church, and continue there during the time of divine service*, according to the laws and statutes in that behalf made and provided, *should*, within a time limited in the Act, receive the sacrament of the Lord's Supper in the church of that parish where he should most usually abide during that time, &c. And by section 17, if any person indicted in consequence, *shall submit and conform himself*, and become obedient to the laws of the church of England, and repair to the parish church of his most abiding, and there hear divine service according to the true meaning of the statute in that behalf made and provided, and there publicly receive the sacrament according to the laws of the realm of England now established, he may reverse all the proceedings against him.—Receiving the sacrament throughout this Act, is considered as perfectly distinct from, and unconnected with, what was at that time considered as constituting conformity. A person attending divine service in a church was a conformist, within all the statutes existing when this was made, nor were such affected by it. A new crime was made, viz. not receiving the sacrament of the church, even in those who did conform by repairing to church regularly.

² Parl. Hist. Vol. IX. p. 74.

trarily imposed on themselves in order to prevent Papists from sitting in the House,) that all the Members should receive the sacrament on the next Lord's Day; and a committee was appointed to see it done, and to take care *that no Papist should sit in the House*; and on the 20th of November³ afterwards, Sir Robert Harley reported from that committee, that they had resolved, that none should sit in the House, but those who would take the sacrament. A similar order was made⁴, (as we have seen before) after the Restoration, when Charles the Second had declared to Parliament his intention to marry the Infanta.—From the circumstances accompanying it, there can be no doubt, that the principal object of that latter order was to exclude not the Protestant Nonconformists, but the Papists. I say the *principal* object, because it is possible that the resentment for past misfortunes, and the fear of future evils, might make some secretly wish this order to be enforced, that particular vigorous opponents of the Restoration might be excluded. It is, however, for the sake of candor only that I make this last admission; for it is much more probable, that the order had nothing to do with the Protestant Dissenters, as such; since at this period they were so frequently communicants with the church.

³ Parl. Hist. Vol. XI. p. 81.

⁴ 1661.

The receiving of the sacrament according to the rites of the church of England, never was a discriminating mark of *religion* among Protestants. For occasional conformity always existed between the different reformed churches. The Dissenters, when these acts were made, communicated occasionally, without scruple, with the church of England; and the Episcopalians, who were driven abroad during the reign of James the Second, as readily joined in communion with the foreign reformed churches *. At the time of passing the Test Act, many of the principal Nonconformists, including some of their most respectable ministers, were used to communicate occasionally with the church of England, in order to avoid the sin of schism, and manifest their charity and affection to the universal church of Christ †.

The

* In the debate on the occasional Conformity Bill in 1703^a, Bishop Burnet declared he had been an occasional conformist in Geneva and Holland; and that if he should be driven beyond sea, he should communicate with the foreign churches: "So (said he) I think occasional conformity, with a less perfect church, may well consist with the continuing to worship God in a more perfect one. It remains then a point of opinion, which church or society is the less perfect."

† Occasional conformity was coeval with nonconformity itself. The old Puritans were dreadfully alarmed, lest they should be charged with the crime of schism; and

^a Lords Debates, Vol. II. p. 61.

in

The act of receiving the sacrament, can give no security to the church, for it is not a mark of affection to its rites; it implies no engagement

in 1587, one of the rules imposed upon themselves was, that they should endeavour in preaching to wipe off the imputation of schism, inasmuch as *the brethren communicate with the church in the word and sacraments*, and in all other things except their corruptions^b. They thought the established church was a true church, and separation from it a sin. The Brownists were the first of their body, who ventured, to the great horror of their brethren, to withdraw themselves entirely from the communion of the church of England, and to say that it was no true church.—Out of this sect arose the Independents, who made no scruple at first to join with the church in her doctrines and sacraments, though they thought it unlawful to declare an approbation of her ceremonies, or mode of church government. The bulk of the Nonconformists continued to communicate occasionally with the church, until the year 1645, when the Presbyterian form of worship was established.—The Independents, after having been deluded with vain hopes of a comprehension, prayed that they might not be brought under the power of classes, nor forced to communicate in those parish churches where they dwelt, but that they might have liberty to join with such congregations as they preferred. The Presbyterians objected to this, because it implied a total separation from the established rule; to which the Independents answered, that they would agree in the most essential points, *and would communicate occasionally with the Presbyterian church*, and receive their members to communion in return. But

^b Vol. IV. of Neale's History of the Puritans, p. 329.

ment not to alter its form or discipline. It is no proof of a person's conformity to the established religion, for to perform this one solemn act

this did not satisfy the Presbyterians, who in opposition to this separation, and the occasional conformity offered by the Independents, made use of arguments, which they little thought would, in less than twenty years, be turned against themselves. It does not appear, that the Independents ever gave up communicating occasionally, while the Presbyterian church was established.—And after the Act of Uniformity, most of the Presbyterians, and probably some of the other sects, communicated occasionally also with the church of England. So that in the year 1663 c, Mr. Baxter proposed at a meeting of their ministers, that they should consider *how far it was lawful or their duty to communicate with the parish churches in the liturgy and sacraments*; and used many arguments to prove it lawful, which were not opposed by any of his brethren. At another meeting in 1666, after the fire of London and the plague, it was agreed, that *communion with the church of England was in itself lawful and good*, where it would not do more harm than good.

It appears, in short, from Bishop Stillingfleet^d, that they were not to be considered as entirely separated from the church, until the king's declaration of indulgence issued in 1671-2; in consequence of which they built some meeting-houses, and continued ever afterwards to keep up separate congregations. Several publications appeared in defence of these separate meetings, which went upon principles that would justify any separation. This

^c Stillingfleet on Separation, p. 158.

^d Preface to his work on Separation, p. 23.

seems

act constant, an entire conformity is not necessary * ; so that a compliance with the Test Laws, cannot be taken as a full and entire approbation

seems to have offended the good bishop, who treats separation from a true church as a crying sin. The Presbyterians still, however, admitted the church of England to be a true church, perfectly orthodox, and agreed with it in the same doctrines and sacraments. They had separate congregations for greater purity of worship, but made a point of communicating occasionally with the church of England, as they would have done with any other *tolerably* pure church. But when they were earnestly pressed by those in authority to join in communion, they refused it ; “ and have been more and more backward ever since,” says Bishop Stillingfleet ^e, “ till now.” It seems, that occasional conformity existed in England after the revolution, but was then upon the decline.

* A conference was desired by the House of Commons with the Lords ^f, on the bill for ease to his majesty’s subjects, Dissenters, in matters of religion ; and the reasons to be assigned at the conference were agreed to by the House, on March 29, 1672. One reason runs thus : “ We suppose your Lordships intend not to deprive any “ person from the benefit of this Act, but such as have “ revolted from the church of England ; and we cannot “ esteem any persons to have been members of the church “ of England, *but such as have both conformed to the liturgy, and received the sacrament.*”

In 1722, Lord Chancellor Parker held the bare receiving of the sacrament twice, not to be sufficient proof of

^e His book was published in 1681.

^f Journals, Vol. IX. p. 281.

probation of the whole constitution, and frame of the established church.—From the debates on the occasional Conformity Bill it appears, that a very respectable man was found a very zealous Conformist in every respect but one, infant baptism. And Bishop Stillingfleet tells us, that “even Brown, the head of the old Separatists, “thought it lawful to join with our church in “some acts of worship; and others thought “they might join in acts of private and christian communion, but not in acts of church communion; others thought it lawful to join “in hearing sermons and *pulpit* prayers, though “not in others, and yet were charged with separation by the old Nonconformists.”

The practice of too many of the modern Dissenters confirms this reasoning, who are daily driven by their necessities, or allured by secular advantages, to conform in this one particular, although they dislike the religion and ceremonies of the church in general; and when that one act of accommodation is performed, they return to their old attachments.

conformity under the Popery Laws; the act of receiving of the sacrament, being “an act very common for Roman Catholics to do upon a worldly motive, and then “we hear no more of them.”

L

These

These observations are verified by many facts. Several of the most respectable corporations in England, are in the hands of the Dissenters. And the number of them, and of Scotchmen who are employed in the service of Great Britain, sufficiently prove, that the Test Acts do not, in fact, exclude them from offices. — This lessens much the force of the arguments used against the repeal of these Acts; for it is not a question, whether all Dissenters indiscriminately shall be eligible, but only whether the *very few* who scruple to receive the sacrament shall be excluded. This reduces the point in dispute to a narrow compass, and he must be a timid politician, who can apprehend danger from *their* admission; especially as sensible men will probably think, that these form the most valuable and moral part of the Dissenters.

The diminution of numbers among the Dissenters, since they have been relieved from the penal laws, prevents a possibility of mischief to the establishment. By repealing the Test Acts, their body would not be increased, and the churchmen would still form a most prodigious majority; they would still far outnumber all the sects of Nonconformists put together. That majority, which gave the Church of England her existence as an established church, and

has still supported her, is not likely to leave her on account of her shewing regard to the rights of others; especially as it will remove one principal objection which some Dissenters have to her, namely, that she is not enough tolerant.—But should the establishment become the minority, compared with the whole body of Dissenters, (which is daily becoming less likely to happen,) they could never unite their discordant interests to attack the church; but would prefer liberty under the establishment, to the chance of being at ease under each other.

The repeal of the Test Laws would not exclude a single churchman, or put the Dissenters in possession of any one office, but would only render them eligible to such as might be offered to them. — The law of England has, wisely perhaps, provided a check upon the admission of improper persons into the offices of state. The king, who alone can dispose of them, is obliged to be of the communion of the church of England; and he, it may be presumed, will not be inclined to lavish them on persons, who entertain sentiments inimical either to his government, or to the church over which he presides, and of which he is a member. The Test Act was intended as a check upon this power of the king. At that time it should be

remembered, that the king might be, and actually was, of a religion hostile to that, which it was his duty to protect; and therefore that there might be just ground of apprehension, while he had the disposal of all offices. But that danger is now wholly removed, for by a subsequent law, the monarch must be of the national religion.—The offices of corporations too cannot be obtained by Dissenters, but by the suffrages of their fellow citizens, who being members of the church of England, will not suffer its interests to be materially affected.—So that the Dissenters, even if the Test Laws were repealed, could injure the state in office only through the medium of the king, or the members of the established church, a very few cases only excepted.

Against the *Roman Catholics*, this Test is but a weak security to the established church, for many of them have no scruple to receive its sacrament, because they hold “the church of England to be no church, her ministers no ministers, and her sacraments no sacraments.”—But the doctrine of papal dispensations destroys the efficacy of every test, by which Papists are to be excluded. From the late pamphlet published by the Bishop of Cloyne³, it appears

³ Page 17.

that

that the Pope still assumes the power of dispensing with oaths; and that the nuncio at Brussels, as his deputy, actually exercised it in 1768, by declaring, that as an oath of allegiance intended to have been exacted from the Roman Catholics in Ireland, was, "in its whole extent unlawful; so in its nature it was invalid, null, and of no effect, inasmuch that it could by no means bind and oblige consciences;" and gave orders to the titular archbishop of Dublin, to apply remedies "for recalling those who had already taken such oath, to their proper duty, that they might in the mean time repair the scandal they had given."

In like manner dispensations may be given, to allow communion with any church; and therefore this Test, so far as it concerns Papists, will be of effect, not so long as the government pleases to exact it, but only so long as a foreign power shall think proper to allow them to take it. Sir Archer Crofts, in a pamphlet intitled "No reason for applying for the repeal or explanation of the Corporation and Test Acts," published in 1736, gives an instance of a dispensation to a Protestant priest, of Languedoc, converted to popery; not indeed to take the sacrament in a Protestant church, but what is much stronger, to execute the functions of a

Protestant minister for three years; with this proviso, that in his sermons he said nothing contrary to the creed of the true church, and abstained from the sacrament of the Lord's Supper. If the dispensation could go to this extent, is there any doubt that it might have gone further, and have given him an unconditional liberty to perform *all* the functions of a Protestant minister?

The *Compleat Historian* relates, that in 1682⁴, the Papists assumed the name of Protestants, and got into offices; and that one Duffey, a Scotchman, got into the cure of souls, and had the rectory of Raile, in Essex. Dr. Goodman, Bishop of Gloucester, who died in 1655, lived in the communion of the church of England, yet was a Papist. Sir Philip Tyrwhit, who was of that persuasion⁵, did not scruple in 1676, to receive the sacrament. And in the book cited in the margin published in 1732, a recent instance is alluded to. "The other day a certain popish lady," says the author, "in Yorkshire, patroness of a certain church, in order to qualify herself to present a friend to the place, did renounce the Popish religion, and

⁴ Dispute better adjusted by Chandler, 1732, p. 21.

⁵ Church in perils among false brethren, p. 6.

" conformed to the church of England, took
 " the Test, and when all was over, she return-
 " ed to the church of Rome *."—It is unne-
 cessary to have cited even these instances, since
 there is one which, from its notoriety, and the
 rank of the person concerned, is decisive upon
 the subject; for Charles the Second, who was
 of the Roman Catholic persuasion, made no
 scruple of conforming to all the rites and ordi-
 nances of the church of England.

The insisting upon the receiving of the sa-
 crament from those who have a sense of moral
 obligations, but *deny the divine mission of Christ*,
 can give no security to the church. Such men
 cannot feel any very great predilection in favour
 of christianity itself, or be partial to any parti-
 cular establishment of it. They have made
 this Test an object of ridicule, but have not
 found it any obstacle to their promotion.—The
 Protestant Dissenters, who only differed from
 the church of England in some minute points
 of discipline, were excluded from offices, and
 persecuted at the time, when the author of the
 Characteristics was Lord High Chancellor of
 England; and when Lord Bolingbroke (then

* This is cited from the Memoirs of Monsieur Degeant,
 printed at Grenoble, in 1688, written by command of
 Cardinal Richlieu.

Mr. St. John) was Secretary of State, and was high in favour with a princess of *pious* memory †.

The Sacramental Test, which is in itself only a doubtful and ineffectual contrivance to secure the church from danger, is rendered still less efficacious, from the *manner in which it is applied*.—As the government of England is constituted, the offices, which fall within the Test Laws, are not those from which any mischief can be reasonably apprehended to the establishment. Most of the more honourable civil offices, are offices of profit, and merely ministerial; consequently the courts of justice may compel those who fill them to a strict performance of their duty. Many others are judicial offices; and as long as there is a controlling power, which can punish misdemeanours in each, vested either in the courts of law in the

† “ Anthony Collins, Esq; who wrote several treatises
“ against christianity, was in the commission of the peace;
“ and being obliged to qualify himself according to the
“ Test Act, is said to have given notice of his design in
“ the following ludicrous manner, “ *Sir, I design to take*
“ *a bit of bread and a cup of wine with you;*” and when
“ he was pressed by a friend upon the impropriety of a
“ person professing his principles, receiving the sacra-
“ ment, he answered, I only do it to pay a compli-
“ ment to the custom of my country.”

ordi-

ordinary course of business, or in the parliament by way of impeachment or attainder, no great evil can result from the admission of secretaries.—As to the offices in corporations, it is too ridiculous to suppose, that because a Dissenter is made a mayor, or a common councilman, the established church of the kingdom is in danger.—These acts are chiefly calculated to prevent disaffection in those only, who are obliged to act in obedience to the commands of others; but leave those who have the power to command without restraint. They are wisely adapted to prevent mischief from quarters whence none is threatened, but not to reach those whence alone it can arise.

By the constitution of England, the king is entrusted with the sole administration of the government, and is invested with the right of judging in what capacity, and upon what terms, his people are the best qualified to act under him in the management of public affairs. Placed in a situation thus exalted, entitled to a negative on the proceedings of the other branches of the legislature, and head of the established church, his power becomes truly formidable. At the time of passing the Test Act, Charles the Second was bound only by his coronation oath to support the church; and this being esteemed

teemed too slight a security, something further was deemed necessary. Two modes of correcting the evil might suggest themselves, first, by obliging the king to give assurances of his affection to the established church; or, secondly, fixing upon some Test, which should turn out improper persons, who had already got into offices, and should afterwards restrain this exercise of prerogative to the choice of those only, who should shew their conformity to the ordinances of the church. The latter was the mode adopted; and at that time we will suppose, that the Test Act was both justifiable and necessary.—But a great alteration has since taken place; and the legislature has laid the king under such restraints, that there can be no longer occasion to continue this test. He is by the Act of Settlement, neither to be a Papist, nor to marry one; he is to make the declaration against popery; and is bound to join in communion with the church of England. One would think these restrictions would satisfy the clergy, without requiring that the royal prerogative should be further abridged; and that the appointment of a king so conforming, would be a sufficient security, that dangerous persons should not be admitted into power.—This restraint laid upon Charles the Second, in his capacity of *King of England* only, and by an *English* Parliament

liament moreover, ought not to extend to a king of *Great Britain*. As the father of his people, his cares extend to the inhabitants of every part of the island; and the offices which belong to Scotland, in partnership with England, he must feel a repugnance at being forced to withhold from his Scotch subjects, unless they will give up their own religious principles, and submit to receive the sacrament according to the rites of the church of England. The security afforded to the church by the Act of Settlement, renders the restoration of the prerogative to its ancient splendour, a matter of no risque; more especially as the danger from a Popish Pretender to the crown is over, and a prince of that persuasion can never again be seated on the throne of Britain.—It would not be difficult to shew, that restraining the king to the appointment of members of the established church only, in the selection of civil and military officers, can be of no real security to it. James the Second, notwithstanding this boasted Test Act, filled all the offices of state with Roman Catholics; and having the whole executive power vested in him, nothing but a general revolution could have prevented his continuing them there. So far then as the king is concerned, that Act may be repealed without any additional danger to the church, for the restraint imposed

imposed upon him is weak and insignificant; and if it was not so, a subsequent Act, which secures his affection to the established church, has fully provided against future perils from this quarter.—Besides, covert evils are generally more dangerous to all governments, than those which are apparent and capable of exciting immediate alarms; and if a king was disposed to favour popish principles in this country, it would be wise to allow him to put the matter, as early as possible, out of doubt in the minds of his subjects (clergy as well as laity) by suffering the evil to take an open course. There is no doubt, that a few Papists early discovered to be admitted to offices, would give room for a more serious check to the evil, than could possibly be expected from the operation of laws, which at the same time cover the offender with a pretext, to shelter him from the charge of having eluded them. The best check to disorders of this description, introduced by the sovereign, is from the remonstrances of his subjects; and the earlier and more generally they are laid at the foot of the throne, the more are they likely to prove of weight.

Next to the King in dignity and consequence are the two Houses of Parliament; and upon them the Test Act puts no restraint, This to

the advocates of the Test Act must appear an indefensible omission; to its enemies it affords ground for exultation and triumph. Those who are invested with the power of making laws, can certainly do more essential injury to an establishment, than any other class of men. It exists but at *their* pleasure, and the executive branches of the government are authorized to support it only so long as *they* think fit. They alone can legally enforce obedience to or relax the terms of the Test Laws; and they can best controul the measures of the executive department, if conducted in defiance of those laws, on principles destructive to the public welfare. —The Dissenters do not ask much, when they solicit only to be exempted from laws, which do not call upon the Lords and Commons, as members of the legislature, to give proof of their affection to the establishment; but require proof only from those from whom no danger can arise, and who are accountable to the justice of their country for all their actions.

This defect in the Test Act was remedied by a subsequent law; a test of another kind being devised for the security of the establishment from dangers which might arise from the disaffection of the members of either House of Parliament. Several attempts had been made to introduce a
Test

Test which should exclude Dissenters, but they were successfully resisted by those who most zealously pressed forward the Test Act; and about three years only after that Act had passed, the very same House of Commons brought in a bill, requiring all members of both Houses, as a sufficient test of their principles, to take the oaths of allegiance and supremacy, and to make the declaration against transubstantiation before they took their seats. This test was in substance the same as was under consideration of the House of Commons about the time the Test Act was passed; and was then intended to have been applied to all offices. It was purposely framed in such a manner as to exclude Papists, but to admit Protestant Dissenters; and there cannot be a stronger proof, that the House of Commons found nothing in the principles of the Nonconformists inconsistent with the security of the church, since the express purpose of this contrivance was to obtain their assistance in its favour against the common enemy.—If the exclusion of Papists be still an object of importance to the establishment, this Test may be substituted in the room of that at present required on admission to offices. The experience of more than a century has proved, that it is equally efficacious with any other; and it must be allowed to be a more rational one, than the perversion

perversion of a holy ordinance from the original purpose of its institution. The Dissenters, as to *themselves*, have no objection to this test being generally required on admission to offices; and therefore the object of their application to Parliament does not go to the absolute repeal of the present Test Laws, but will be obtained by barely exchanging the sacramental test for this. And the undeserved mark of reproach now fixed upon them might be removed, without the smallest risque to the established church from the admission of Papists; for these might be excluded as effectually as they ever have been, by the test still to remain.—The efficacy of this test is a decisive answer to all arguments for the necessity of retaining the sacramental test, as the *only* means of giving security to the established church; for here we have two co-existing tests, both equally efficacious; and what ought to weigh much when the question is only as to an exchange of them, the one is liable to very serious objections, the other is entirely free from them.

In fact, the Test Laws have proved of little service for the protection either of the church or the state in times of danger; nay, it is remarkable enough, though easily to be explained, that the most serious attacks upon both have

proceeded from those who have not scrupled to qualify as prescribed by law for the holding of offices ; while the warmest friends of both have been found among those who were deemed the outcasts of the society, and excluded from all civil trusts. This was the case through the reigns of Charles II. and James II. during which the church frequently gave support to the arbitrary designs of the court, even when they obviously tended to the destruction of the civil constitution. The whole bench of bishops (except three) voted against the Bill of Exclusion, and as members of a Protestant church, shewed themselves anxious to secure a Papist for its head¹. The majority of the members of the church, more especially of those who had landed property in the kingdom, opposed the glorious Revolution, and struggled that their religion should still be left to the mercy of a popish prince ; the doctrines of the divine indefeasible rights of Kings, and of passive obedience and non-resistance, were thundered from their pulpits ;

¹ A similar inconsistency of conduct was exhibited in Scotland at the time of the Revolution : The prelates of that kingdom, without, I believe, a single exception, zealously adhered to the popish tyrant, and gave every opposition to their protestant deliverer. They met with their reward, for their conduct occasioned the abolition of Episcopacy, and the establishment of Presbyterianism in its room.

and

and if the Dissenters (who were then a much more numerous body than at present) had not lent their assistance, the church of England must have been overwhelmed, and the constitution ruined. The opposition which our great deliverer met with through his whole reign, proceeded from the zealots of the church; who rather than see difference in opinion treated with lenity, wished to have restored the fallen tyrant, and to have lighted up the flames of persecution, though they might have been scorched themselves. In the reign of Queen Ann, the high church party, who not only took the test themselves, but forced it without mercy upon others, laboured hard to restore the Roman Catholic religion; and were defeated in their designs almost entirely, through the means of the Dissenters, without whose aid the true friends of the church could not have resisted them for a moment. The two rebellions of 1715 and 1745, were raised and supported principally by the Episcopalians, including the Dissenters of the Episcopalian persuasion in Scotland; while not a single English Dissenter was found in either of them. Let any man, after this short state of facts, say, whether the test is an effectual security to the church or constitution; and whether the Protestant Dissenters are deserving of the brand of infamy which is fixed upon them?

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In these instances the danger to the church has always arisen from false friends within itself. This is the necessary effect of the present Test Laws, by which it becomes the receptacle for many of the wicked and profligate of every other sect. Men of bad principles, or of no principles, will naturally obey the dictates of interest and fashion, and at their call conform to the established church, in this or any other particular. Hence none but the virtuous and the good can be excluded, by making the receiving of the sacrament a qualification for holding offices. The conscientious Dissenter or Roman Catholic is thereby excluded, but those who disgrace the religion of either are received with open arms. It will be difficult to satisfy the enlightened part of mankind of the policy of continuing a test which excludes the virtuous, but is not calculated to keep out the wicked; which affords no real and effectual security for the established church; and tends greatly to the destruction of religion, by holding out temptations to men to become hypocrites, and bear the semblance of being what they are not. Conformity is purchased at too dear a rate, when religion is made the price.

C H A P. VI.

RELIEVING THE PROTESTANT DISSENTERS
FROM THE TEST LAWS WOULD NOT ENDAN-
GER THE CHURCH, SHEWN FROM THE NA-
TURE OF THEIR PRESENT APPLICATION.

BUT further, the repeal of the Test Laws, while it would be a relief to many of his Majesty's faithful subjects, would in no way affect the church. That was established long before these Acts were made, and would continue so to be if they did not exist. Its doctrine, discipline, revenues, and preferments, would remain exactly the same as at present. Not one article of its doctrines, not one rule or ceremony of its discipline, not one farthing of its revenues, or the smallest preferment, would be turned out of its present channel. That repeal would leave them where it found them, fully protected by statutes, and fenced in by canons. No legal power or privilege would be taken from the church, nor would any thing be introduced which could pave the way for future danger. On the contrary, the friendship of a respectable body of men, rendered contented by such a measure, would add to their security; especially

if there is the least colour for pretending, that the Dissenters have it in their power to become formidable were they so disposed.

If questions of late have been agitated in England concerning tythes, has it not been by the landed interest? or if concerning ecclesiastical courts or powers, has it not been in the legislature only? Have not the Dissenters been silent as a body, except when attacked, or except as mere controversial writers on points of doctrine, and not of power or possessions?—On the contrary, have they not fought the general cause of religion against deists and atheists with great zeal, and by the confession of many dignitaries in the church, (who have made the circumstance matter of reproach to their own inferior clergy) have they not done it with great effect, and has not this ultimately strengthened the hands of the church?—In short, can any body who is acquainted with their history generally, affirm, that they have not founded their chief comfort in tranquillity; and borne evident marks of satisfaction in the civil and religious constitution of their country, their own hardships excepted?—Their ministers have made no ill use of the indulgences lately granted them; nor will their laymen of those now sought for. The church may therefore remain perfectly

perfectly contented, that the Dissenters are never likely to attack *their* rights, unless it should be indispensable for the restoration of their own; and that, were there any danger of it under present circumstances, the easiest way of disarming them as foes is by making them friends

C H A P. VII.

OF THE EXPEDIENCY OF RELIEVING THE
DISSENTERS FROM THE TEST LAWS.

THE excluding of a body of men from the public service of their country, is evidently a weakening of the whole collected strength of it, exactly as the detaching of a large body weakens the force of an army; and if numbers only are to be looked to, the effect must be greater or smaller according to the quantum of subjects incapacitated. But as it may possibly happen that some of the persons best qualified to perform the duties of any particular office may be among those thus excluded, it may also happen that the public loss by such impolitic exclusion may be considerably greater, than if the number only was adverted to.

That nation is the most strong (*ceteris paribus*) where the people are most united among themselves; and that is the most weak, where intestine divisions are most violent. Of course the relative strength of this kingdom is now infinitely greater than before the Union; not merely from the accession of the strength of Scotland

as it then existed, but from the removal of every cause of dispute between the two kingdoms, and the uniting of both in one common interest, instead of their weakening each other by perpetual jealousies and broils.—For the same reason the executive power of the state has acquired a vast accession of strength within these few years. Every Monarch since the Revolution has been principally engaged, in times of peace, in managing parties, and stilling the jarring domestic factions that have often shaken the throne itself. The two Princes of the House of Hanover who preceded his present Majesty, were hardly ever at rest, but were called upon, almost without respite, to punish plots, to quiet rebellions, and to repel open attacks upon the crown. But how widely different the present reign! His Majesty has for twenty-six years swayed the British sceptre in perfect peace at home, at least from the factions which before were wont to agitate the empire; the claims of a foreign Pretender to the throne are worn out and forgotten; the numbers of the different Non-conformists have been daily diminishing, and the remainder of them have, by lenity and kindness, been much conciliated to the national church. So that his Majesty presides over a people more powerful and united than any of his predecessors; and the kingdom enjoys a tranquillity

quillity which has not been known for several centuries in Britain; for the parties of politicians now subsisting are not of the kind we are alluding to, and make but a small figure in a national view, and secure, rather than shake, either throne or constitution; and whatever nature they may be of, the Dissenters, as such, can pretend to little share in them.—If the ministers of the established church therefore fancy themselves to be *allied* to the state, they must feel that their establishment becomes more firm, as the throne becomes more stable; and an attention to their own interest, as well as the precepts of christianity, should induce them to labour with all their might to strengthen this union, and to render this tranquillity as permanent as possible. To accomplish this, there are no means so effectual and so certain as the removing from their fellow-subjects every cause of uneasiness on account of religious matters, more especially when it can be done without danger to the state or their own religion.

The situation of foreign countries with regard to Britain, affords strong arguments in favour of repealing these Acts, by which the rights of the Protestant Dissenters are so materially abridged. The immense importance of manufactures to a country, is now universally acknowledged.

ledged. By them Great Britain has been chiefly raised to wealth and glory, and this small island enabled to rank itself foremost among the powers of Europe. But by whom were these manufactures introduced among us?—By those who were exiled from *their* country for the sake of their religion *, and sought for an asylum among us. In this manner some of our most important manufactures, (among others the woollen, stuff, silk and cotton) were either introduced, or brought to perfection here.—But at the time when these men sought for liberty of conscience in Britain, it was not necessary for them to receive the sacrament, to entitle them to the rank of citizens. Our ports were then open, and they were received with open arms, and without conditions. The impolicy of imposing a religious Test on those who have offered themselves since as subjects, has been fully shewn by ex-

* * As for the debates about the foreign Protestants, there is great reason to give them all just encouragement; for as they have brought among us many new manufactures, so they have carried them so far, that of late years we have exported to the value of a million of woollen manufactures more than was done in King Charles's reign, before they came among us; and the putting them under apprehensions or discouragements, may be a means to drive them to a country where they are sure of an entire liberty.' *Reasons of Lords on Occasional Conformity Bill*, 1702.—Chand. Vol. III. p. 241.

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perience ; for since the reign of James the First, our strictness in that respect has prevented any material accession to the skill or industry of the nation from foreign countries. As we profited formerly by being more liberal than other nations, so it is possible that others may now reap advantage from being more liberal than us.—Some of the states of America offer an asylum to the Dissenters, with free access to public offices. Happily for England, the unsettled situation of that continent deters them for the present from thinking of emigration ; and the Legislature, by restoring them to the rights of citizens, may so attach them to their native country, as perhaps to prevent them from ever removing. But should this opportunity be let slip, and a rage for emigration arise, there is no saying where it may end. It helped to depopulate the north of Ireland before the Test Act was repealed there, and may have the same effect at least upon some parts of England.

The treaty of commerce with France will shortly make a great alteration in religious matters ; for by the 5th article it is provided, that
 “ in matters of religion the subjects of the two
 “ crowns shall enjoy perfect liberty : They shall
 “ not be compelled to attend divine service,
 “ whether in the churches or elsewhere, but on

“ the contrary, they shall be permitted, without
 “ any molestation, to perform the exercises of their
 “ religion privately in their own houses, and in
 “ their own way.” These words mean much
 more than they seem at first to import.—Papists
 cannot perform the exercises of their religion
 without the assistance of priests; and of course
 it is implied from this article, that their priests
 shall be tolerated; and as no test or subscription
 can now be required from them, they will enjoy
 a more perfect toleration than the Dissenting
 Ministers, who are obliged to subscribe one.—
 “ Privately in their own houses,” are words of
 great latitude and extent; the priest, who is
 saying mass, and exempted in so doing from the
 penal laws, is not bound to perform his spiritual
 duties for the benefit of the family only; others
 may be present; and as no number is limited,
 any number may be collected. By this means
 this private assembly becomes virtually, and for
 the purposes required, a public one; and as no
 common room can contain a multitude, a
 large one may be built for their accommoda-
 tion, and thus a public meeting-house is obtain-
 ed. God forbid that any thing should fall from
 the pen that writes these pages, that should tend
 in the smallest degree to abridge the religious
 indulgence given by this treaty.—I rejoice with
 the friends of religious freedom, that the seve-
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rity of church power has been relaxed in this instance by the state ; but I contend that this clause of the treaty will, in effect, give to the Roman Catholics the liberty of holding their religious meetings *publicly*, although the words are that they shall be held *privately* only, and that they will be, in this respect, in at least as good a situation as the Protestant Dissenters.—The Dissenters then may justly think their lot a little hard, if, when the stream of national liberality carries benefits profusely to the subjects of another nation and the professors of a religion hostile to the church, it should not be allowed to bend its course to *them*.

In return for this indulgence, France has agreed to grant a toleration of equal extent to British subjects ; and thereby one grand objection of our manufacturers to settle in that kingdom, is unfortunately removed. A Protestant Dissenter may now consider it as a matter of indifference in which country he takes up his residence, since his religious opinions are *equally* tolerated in both. By using the word *equally*, we do injustice to the liberality of France ; for in his own country the public offices of the state are shut against him, unless he takes the sacrament according to the rites of the church of England ; while in France they are virtually open,

open without conditions, to all whom the King may honour with his confidence.

The history of France affords us abundant proof that toleration may be practised to advantage even where persecution is defended upon principle, and a religion is established, which allows of no difference of opinion. Under the administrations of Cardinal Richlieu and Mazarin, Protestants held offices both civil and military; the latter intrusted Turenne, who was a Protestant, with an army against the Prince of Condé, not only a Protestant, but his relation. Schomberg, Ruvigni, and many others, were placed in offices of high trust and consequence, even under Lewis the Fourteenth, till the revocation of the edict of Nantz *. But to come

* By the edict of Nantz, Art. 27. it is expressly ordained, that the Protestants shall be admitted equally with Papists to all offices; as it shews how much more liberal a Popish country was almost two centuries ago than England is even now, I transcribe the Article at length.—*Afin de reunir d'autant mieux les volontez de nos sujets comme est notre intention, & oter toutes plaintes à l'avenir; Declérons tous ceux qui sont ou seront profession de la dite Religion prétendue réformée capables de tenir & exercer tous états, dignitez, offices, & charges publiques quelconques, Royales Seigneuriales ou des villes de notre dit Royaume, pais, terres, & Seigneuries de notre obéissance, nonobstant tous sermons à ce contraires, & d'être indifferemment admis*
 &

come down to later times, Marshal Saxe was employed by Lewis the XVth to oppose a Protestant army ; and the court of France has within these few years raised M. Neckar, a Protestant also, (originally a private citizen of Geneva) to the head of the finances. His zeal and public spirit in that department, as well as the example of other protestants, have deeply impressed this truth upon the minds of his fellow-subjects, *that a Dissenter from the established religion of a country may be a true friend to its interests* ; and the wisdom and ability with which he conducted the office committed to his charge, have reflected infinite honour upon himself, and by laying the foundation of public credit in France,

& reçus en iceaux ; & se contenteront nos Cours de Parlemens & autres Juges d'informer & enquerir sur la vie, mœurs, religion & honnette conversation de ceux qui sont ou seront pourvus d'offices tant d'une religion que d'autre, sans prendre de ceux autre serment, que de bien & fidèlement servir le Roy en l'exercise de leur charges & garder les ordonnances, comme il a été observer de tout tems. Avenant aussi vacation des dits etats charges & offices pour le regard de ceux qui seront en notre disposition, il y sera pourvu indifferemment, & sans distinction de personnes capables, comme chose qui regarde l'union de nos sujets. Entendons aussi que ceux de la dite religion prétendu réformée puissent être admis & reçus en tous conseils, deliberations, assemblées & fonctions, qui dependent des choses dessusdites ; sans que pour raison de la dite religion ils en puissent être rejettez ou empêchez d'en jouir.

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have placed within her reach a power which may, at some future period, make Great Britain regret, that a Popish country should disdain to be shackled by maxims of religion as intolerant as her own.—The popularity attending most of the above promotions, is a clear proof that the kingdom of France was influenced by some liberality as well as its Princes.

In the Imperial armies, and in some of the Imperial dominions, Protestants have often been raised to high offices and commands, and many I believe are at this day in their hands; and the attention lately paid by the Emperor to the interests of his Protestant subjects, leaves no room to doubt that the remaining distinctions between them and the Roman Catholics are dying away.—It is singular that the church of England should be behind even the Romish church in this particular; a church in which intolerance has always been held a virtue, and persecution a service to God.

On the other hand, the practice of the countries in Europe, professing the Protestant reformed religion, proves, that a Sacramental Test is not *necessary* for the security of an established church, for it appears unknown to them all. And there is no example in history, of any of their churches

churches being in danger, merely from the admission of sectaries into offices.—In Holland where the sects are more equally ballanced than any where else, and of course where the established church is most likely to be insecure persons dissenting from it are admitted into offices without giving any assurance of their conformity; and from military employments, I believe, even Papists are not excluded. This small state is a proof that, as religious distinctions, when the civil magistrate shews a partiality to some in preference to others, beyond what is necessary for support of the establishment, tend to divide a people; so where the civil government does not interfere, they do no mischief.—What must have been the fate of Holland, if Nonconformists had been excluded? With their whole united force, its inhabitants have often found it extremely difficult, to defend their scanty territory against the inroads of their powerful neighbours; but if intestine divisions had reigned among them, and if the government had been occupied with settling the disputes of the several sects struggling for superiority, and with keeping peace at home, instead of taking measures to resist external violence, they must have been reduced, long ago, to the humble situation of a province to some other power. If then a country acquires strength from

from union among its subjects, and the operation of Test Laws is to divide and weaken, and if also they can be removed without any commotion or inconvenience; the result is, that it is expedient to remove them, and thereby to add to the strength of the state.

The situation of Scotland and Ireland, strongly evinces the expediency of repealing these obnoxious laws. There is, as we have before observed, no necessity in Scotland to take the sacrament according to the usage of that church, as a Test for admission to offices; and yet, if such a Test is the *only* mode of preserving one church, it must be the only mode of preserving the other; and consequently, if the establishment of Scotland is safe without it, that of England cannot be in danger. Now the church of Scotland is perfectly safe, although its king professes another religion; although by the union a whole nation of strangers is let in upon her; and although since that union, a race of Dissenters almost unknown before, has been introduced and tolerated.—It cannot be disputed, that the repeal of the Test Laws must be highly grateful to the Scottish nation, who complain with reason of the unjust preference obtained by England from the monopoly of offices in their own church, and that it will promote a

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union of affection between the two people, who are already united by law.

It may be objected, however, that in Scotland there are not many episcopal Dissenters or Papists; and for that reason the national church can be in no danger, from the want of a Sacramental Test. This objection has been answered already, by shewing, that from the peculiar situation of that country, it has more pleas in favour of a Test Act, than perhaps any other part of the world. With respect to Scotland, the whole nation of England are Episcopal Dissenters, and may be deemed intruders into the offices of that country.

But our sister kingdom of Ireland affords a compleat answer of another kind. There the Bishop of Cloyne, in his late publication tells us, that the Protestant Dissenters are nearly equal in number to the members of the established church, and the Roman Catholics greatly exceed both put together. Yet the Test Act (which was exactly the same as and was copied from our own *) was repealed about seven years ago,

* In Ireland the Test Act was not introduced till the second year of the reign of Queen Ann, 1702. It pursued with much exactness the terms of the English Test Act;

ago, and the Dissenters have been ever since eligible, into all the offices of that country, without any assurance of their conformity to the established church. From this liberality, no inconveniencies have ensued.—So far from it, that to this indulgence the church will probably be indebted for its preservation against the attacks of the Roman Catholics. The reverend prelate abovementioned tells us, that a regular plan is formed for the destruction of the Episcopal church, and that its existence perhaps depends on the conduct of the Dissenters, whose interference is likely to be decisive either way*.

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Act; and all persons then in office, or who should be admitted before Easter Term 1704, were required to receive the sacrament according to the usage of the church of Ireland, before the first of August 1706; and every person to be admitted after that day was required to receive it in like manner, within three months after his admittance. The subjects of Ireland were more fortunate than their fellow subjects here in another respect, for by the 6 Geo. I. c. 9. all prosecutions against the above Act, were to be commenced within two years after the admittance into office of the person prosecuted. The reign of the Test Act in Ireland, even with this mitigation of its rigour, was only seventy-seven years; in England it has lasted without that alleviation one hundred and sixteen, and with the good will of some persons might last forever!—

* ‘ They can have nothing then before them but an option of the ascendancy of either the church of Ireland or

He excuses himself for making signals of distress, and calling out for assistance †, because the church is sinking under the machinations of

‘ the church of Rome. Of the former they have had a long trial, and under it have always experienced freedom of religion, and at present enjoy every civil privilege in common with the members of the established church. Their situation cannot be improved; how much it may be changed for the worse under the church of Rome, it behoves them to consider with attention and without delay; as the conduct of so numerous and respectable a body may decide the event.’—History of the Church of Ireland, p. 69.

† The Bishop apologizes for republishing a pamphlet in England relating to the church of Ireland.—By so doing, he has set an example which would justify the Dissenters here, in calling upon their brethren in Ireland for assistance. And it cannot admit of doubt, that their interference must be decisive: for government could not allow the church of *Ireland* to be ruined, (as the Bishop supposes possible) in order to keep the Test Act here.—If the English Dissenters do not avail themselves of the influence of their brethren in Ireland, it will certainly be another proof among many, of their easy tranquil disposition towards government, and even among themselves. It is true, that as bodies, the Dissenters of the two countries do not at all communicate, and that the members of the two bodies have very few private connections one with another: But public principles, and even public interests unite them, and it would not be difficult for them to assist each other; and the more especially, as the English Dissenters, in *all* their former applications respecting the Test Act, have made a stipulation for the relief of their brethren in Ireland.

its enemies.—From the gentle treatment the Dissenters of Ireland have met with, and from the confidence reposed in them by their country, their minds are much conciliated to the establishment, and they may be disposed to assist it against the common enemy; but an opportunity now presents itself of attaching them still more strongly to the church, and of infusing among them that zeal for its cause, which can exist only where a warmth of affection is felt. Let the parent church grant to their brethren of England, the same liberal terms of toleration, which they themselves happily enjoy under its offspring. This would be the strongest assurance, that the establishment of their country will never *resume* a persecuting spirit, and that the church of our country is no longer willing to retain it.

An argument against the policy of continuing the Sacramental Test, suggests itself from the nature of establishments in general, especially where they have been formed for any length of time. According to Bishop Warburton, the established church of any country is the natural ally of the civil government, and “the great preliminary or fundamental article of alli-

¹ Alliance between church and state, p. 68.

"ance is this; *that the church shall apply all its influence in the service of the state, and that the state shall support and protect the church.*"

The church then, according to him, had two objects, one *religious*, the other *political*.—Upon the bare statement of this system, can any one doubt that it must lead to monstrous corruptions and abuses? Professors of religion cannot worship God and Mammon. In experience, the established church has been found a constant and faithful ally to civil governors; it has encouraged their incroachments on the liberties of the people, and has shared their plunder.

A system of spiritual tyranny erected on this foundation, more or less oppressive according to the spirit of the nation over which it exercises dominion, must dread a rational examination of its rights; for whenever the spirit of inquiry goes forth, all its usurpations are in danger. For this reason, concessions in small matters are politic and wise; resistance will occasion discussion, and the establishment lose in character more than it gains by victory. For the sake, therefore, of the church itself, its best friends ought to wish anxiously, that the intended application of the Dissenters may meet with no opposition.—The friends of religious liberty

liberty (they may rest *assured*) will be indifferent about the event of it, if in its consequences the rights of mankind shall be better understood, the injustice of the establishment exposed to public view, and the claim to a full and perfect toleration of those who differ from it asserted and acknowledged.

It will be a little singular, that in an age when Deism increases, when taxes grow burthensome, when the press is open, when a liberal spirit is rising by a sort of common consent in the public, and in the government of every nation in Europe, that the clergy of this country, who have such large civil privileges at stake, besides their ecclesiastical ones, together with immense revenues, (not collected in a mode to give perfect content to the landed interest, nor yet distributed among their own members in a way to give a due subsistence or satisfaction to all;) it will be singular, we may observe, if under such peculiar circumstances, the dignitaries of the church should oppose, in or out of the legislature, the course of policy and justice in favour of the Dissenters, who have so many pleas in their favour; and so little terror to inspire when duly treated; and whose cause will plead eloquently for them in the present age, were themselves to remain silent, which yet cannot be

expected. Those are wise who have preventive wisdom ; and taking into consideration the circumstances just stated on the one hand, and the little to be gained by an obstinate resistance to reform in favour of so small a body of persons, whose case can be drawn into no precedent if relieved, there can be no doubt on *which* side preventive wisdom lies.—It is not a selection of a few characters, and a few writers, from among the whole body of Dissenters, that can justify any harsh conclusion as to the whole of them, and much less any harsh measure. They are to be judged of generally, for a course of time, and with the eyes of a statesman ; and the more especially, as a refusal of their requests will produce no change in the individuals complained of, who if they offend at all, must be acknowledged to offend even under the present system of severity and ill will.

With one observation more addressed to those, who retain the notion that the existence of Dissenters is an evil to a state, I shall conclude the arguments for the expediency of taking away the odious distinction in question.—I will not pay these persons so ill a compliment, as to suppose, that a little reflection would not cure some of them of this prepossession. The religious, as well as the political system, benefits by a little

little variety of opinion, and by an opposition of characters; and the many able defences of natural and revealed religion, and the many excellent moral writings proceeding from the Dissenters, are a proof that the Dissenters have also afforded a positive advantage to the church, by confirming that grand *basis* on which the church is ultimately built. Their writings also have, in the opinion of many of the clergy, helped to liberalize the church itself; which if there had been no sects existing, would probably have retained many of those absurd tenets which prevailed in it a century ago. The greater strictness of education among the stricter sectaries, is another advantage arising from sects; and hence chiefly it is, that manufactures and commerce have been found to prosper so much in the hands of sectaries all over the world, where they have not been too severely treated; and hence likewise the riches of these sectaries, and as a consequence of their riches and softened manners, their frequent reunion in a few generations, with the establishment of the country where they are found.—But such is the propensity of mankind to variety of opinions, that were there no sects now among us, they would soon start up out of the church itself, of which certain respectable favorers of Socinianism have furnished a signal example; and persecution is not only a bad measure in itself for
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preventing it, but it is too late in the day for it to be practicable to use it.

But putting these arguments out of the question, it has been found in all countries, and been felt by none more forcibly than by England, that lenient measures are among those best calculated to diminish the number of Non-conformists. It is an approved maxim in religious politics, that by taking away the distinctions which separate them from the establishment, they are most likely to be joined to it. They exist best as a body, under persecution; and the instant they are suffered to form one mass indiscriminately with the rest of the people, they cease to be formidable. Deprive them of that zeal which leads martyrs to the stake, and they lose much of the power to resist the allurements of the world. The pious and haughty spirit which bears undaunted the infliction of corporal punishment or of death itself, submits quietly to the suggestions of interest, and the allurements of the world. The most grievous oppression under which the Dissenters now labour, is their exclusion from offices, except upon terms which many of them cannot conscientiously conform to; and this mark of reproach is the chief circumstance which distinguishes them from their fellow citizens.

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zens. Rapid as we know the decrease of the numbers of the Dissenters to have been since the revolution, some even of their own body are of opinion, that if they had been restored at that period to *all* their civil rights, it must have been much greater; and there are many among them who dread removal of the Sacramental Test, as the most fatal circumstance that can happen to their interest. Among these was the late Dr. Furneaux¹. "It is my firm opinion," says he, "that the repeal of the Test would be a greater disadvantage to the body of Dissenters, than to the established church; that it would rather diminish than increase their numbers. For in general, men are not much inclined to shock all the principles on which they have acted, and desert a party with which they are connected at once, on a lucrative motive; but they may be gradually softened and relaxed in their principles, by the new connexions into which the possession of public offices would introduce them, by the influence of general custom, and of what is esteemed polite and fashionable, and by the example of their superiors, or of the majority; provided they are not disgusted and revolted by any ungenerous compulsion or re-

¹ Furneaux's Letters to Blackston, p. 197.

"strait."—If this argument is not deemed sufficient to prove, that the Dissenters will be gradually extinguished by the grant of their wishes (an event which a statesman, and the wiser clergy, would have to view with some regret); still it will be sufficient to prove, that no *new* dangers to the state, or to the church, are to be expected to result from it, in consequence of its increasing their numbers, their want of tractability, or their power.

C H A P. VIII.

OBJECTION FROM THE UNION WITH SCOTLAND
STATED AND ANSWERED.

THE application of the Dissenters for the repeal of the Corporation and Test Acts in the year 1732 occasioned much controversy, and among other objections it was started, (I believe by Bishop Sherlock) that by the Articles of *Union* these Acts were made perpetual, and therefore that they *could not* be repealed. It was answered by Dr. Sykes and others, but was not entirely abandoned.—There never, however, was an objection more mistaken; but as it may probably be revived upon the present occasion, it may be proper to enter into some discussion of it here.

It is contended, that because all Acts in force at the time of the Union for the establishment and preservation of the church of England, its doctrine, worship, discipline, and government are to remain in full force for ever; and that the Corporation and Test Acts being in force at the time the Union was effected, cannot be repealed. In the note below will be found the passages both respecting England and Scotland, which

are here referred to *; and I protest I am at a loss upon which expression in them to fix, as in the

* In the Act of Union, an Act of the Parliament of Scotland for securing the Protestant religion and Presbyterian church government within that kingdom, is recited, by which her Majesty, (to use the words of the Scotch Act,) “ with the advice, &c. *did* thereby establish and confirm the said true Protestant religion, and the worship, discipline, and government of this church, to continue without any alteration to the people of this land to all succeeding generations; and more especially her Majesty, with advice and consent aforesaid, ratifies and for ever confirms the 5th Act of the first Parliament of King William and Queen Mary, intituled, &c. *with all other Acts of Parliament relating thereto*, in prosecution of the declaration of the Estates of this kingdom containing the claim of right, bearing date the 11th of April, 1689. And her Majesty, with advice and consent aforesaid, expressly provides and declares, that the aforesaid true Protestant religion contained in the abovementioned confession of faith, with the form and purity of worship presently in use within this church, and its Presbyterian church government and discipline, (that is to say, the government of the church by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies,) shall remain unalterable; and every King of Great-Britain at his accession to the crown is to swear, that he “ shall inviolably maintain and preserve the foresaid settlement of the *true* Protestant religion, with the government, worship, discipline, rights and privileges of this church, as above established by the laws of this kingdom (Scotland) in prosecution of the claim of rights.”

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in the smallest degree including the Acts for the Sacramental Test in either country: They certainly cannot be thus made eternal as relating to the *establishment* of the doctrine, worship, discipline, or government of the church; for all these were established long before the receiving of the sacrament was made a test for admission to offices.—But let us see if they can assist

—Another Article of the Act of Union declares this to be an essential and fundamental part of the Articles of Union.

A similar Act for securing the church of *England* as by law established, is also incorporated in the Act of Union, and runs thus: “ And whereas it is reasonable and necessary that the *true* Protestant religion professed and “ established by law in the church of England, and the “ *doctrine*, worship, discipline, and government thereof, should be effectually and unalterably secured, be it enacted, &c. that an Act made in the 13th year of the reign of Queen Elizabeth of famous memory, intituled an Act for the ministers of the church to be of sound religion; and also another Act made in the 13th year of the reign of the late King Charles the Second, intituled an Act for the uniformity of the public prayers and administration of sacraments, and other rites and ceremonies, and for establishing the form of making, ordaining, and consecrating Bishops, Priests, and Deacons in the church of England (other than such clauses in the said Acts, or either of them, as have been repealed by any subsequent Act or Acts of Parliament) *and all and singular other Acts of Parliament now in force for the establish-*

assist the *preservation* of any of them. Whether persons in civil offices take the test or not, the *doctrine* remains the same : The ministers of it must still go through the same service, and are liable to the same spiritual censures for heretical opinions. The form of *worship* too must in either case be precisely the same, for the Test Laws neither prescribe nor prevent innovations. The same observation applies to its *discipline* and *government*, for whether a civil officer comes to church to receive the sacrament, or does not, its discipline and government go on as the regulations of other Acts require. And as the Act of Union is thus clear of all reference to these Acts, so are these Acts clear of all particular reference to the objects of the Act of Union ; being from the nature of them in some degree temporary, and respecting circumstances without the church, and not within it ; circumstances which might, and in a principal degree

ment and preservation of the church of England, and the doctrine, worship, discipline, and government thereof, shall remain and be in full force for ever :" And every King of Great-Britain, at his accession to the crown at his coronation, shall " take and subscribe an oath to maintain and " preserve inviolably the said settlement of the church of " England, and the doctrine, worship, discipline, and " government thereof as by law established within" England, Wales, and Berwick upon Tweed, " and the " territories thereunto belonging."

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actually have changed, and which therefore leave these Acts to the discretion of the state to alter along with those circumstances. The Corporation Act was made, for example, as a means of providing at a particular moment, for perpetuating a succession of persons well affected to his Majesty and the civil government, and for the preservation of the public peace in church and state; and the Test Act was made for preventing dangers which might happen from popish recusants, dangers equally occurring at a particular moment,—and which are even now no longer in the same force as formerly, and which would evidently cease the instant Popery should lay aside two or three particular tenets, or the state of Europe should in certain respects be reformed.

The conduct of the Scotch at the settling of the Articles of Union, it is here to be observed, was distinguished by a generosity similar to what had been shewn by the Dissenters of England, when they permitted the Test Act to pass without opposition. The enemies of the Union, for the purpose of overthrowing it, proposed in the Parliament of Scotland, that their countrymen should be exempted from the Corporation and Test Acts; but the other party, aware of the snare, prevailed upon the majority to oppose

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pose the motion; and to throw themselves upon the mercy of the country they were about to be incorporated with, rather than run the risque of a total separation. This could never have been compassed, if they had entertained an idea that in consequence they must be *for ever* excluded from the offices of England and of Great-Britain. The pamphlets published from 1732 to 1736 assert, that in return for this generous conduct they had assurances from the Queen and her ministers, that when all was well settled this grievance should be attended to; and this is the more probable, since we know that Lord Barrington, then a young man and a Dissenter, went over to Edinburgh to expedite the business, and that the Dissenters in general lent a helping hand.—This generosity of the Scotch was requited exactly as the behaviour of the Dissenters at the passing of the Test Act had been; and from the time of the Union to this day they have remained excluded from many of their *own offices*, unless upon taking the sacrament in a foreign church.

An attempt was made in the ²House of Commons, before the terms of the Union were fixed, to give perpetuity to the Corporation and Test Acts, by inserting them in the Act for se-

² Chand.

curity of the church of England; but, thank Heaven, the motion for that purpose was negatived. A similar motion in the House of Lords³, as to the Test Act, met the like fate. Hence it may be fairly inferred, that these Acts were purposely omitted, that they might be repealed or altered in future as circumstances should require.—But this, though an argument which may be deemed in itself nearly conclusive, is not more so than the following.

Had the words of the Act of Union been ambiguous, or could they have been possibly tortured so as to include the Corporation and Test Acts, the legislature itself has by its conduct in many instances since the settling of the Union shewn, that they were never meant to carry a sense so extensive and so absurd; for in points much more nearly affecting the doctrine, worship, discipline, and government both of the church of Scotland and of the church of England, it has upon several occasions made alterations.—Thus by an Act made before the Union, (*viz.* in 1690) the right of nominating to vacancies in the church of Scotland was placed in the heritors and ministers; but by an Act made four years after the Union, that right is vested in the patrons. This is certainly an alteration

³ Lords Deb. Vol. II. p. 168.

of something very like the discipline of that church.

But the innovation made by the 10 Ann, concerning *Episcopal* Dissenters in Scotland, is more applicable to the present case. By that Act they are secured in a compleat toleration, and not left restrained (as the Dissenters in England are) from the enjoyment of offices; and in order to give them a right to baptise their children in their own way, they are exempted from the penalties which the Scotch church judicatories had before the power of inflicting. To accomplish this, two Acts of the Scottish parliament, made before the Union, are altered or repealed.—The legislature here then thought that the granting a toleration to Episcopal Dissenters in that country neither affected the doctrine, worship, discipline, or government of the church of Scotland; and therefore did not hesitate to exempt them from the censures of that church. If the legislature is justified in that idea, it must have power in like manner, to exempt the Dissenters here from disabilities; and to inlarge their present toleration, as they had previously power in Scotland to introduce one where there was none before.

The conduct of the Legislature as to England, even confined to the very Acts in question,

is equally and indeed still more conclusive upon this subject. For one part of the Corporation Act, (which is supposed to be interwoven into the Union, and to be unalterable as the laws of the Medes and Persians,) was *repealed* in the year 1718¹; and the remainder of it was then altered by the time being limited for prosecution of offences to six months; and also by enacting that, notwithstanding that Act made the election of an unqualified corporator totally void, it should be only voidable in future if he was prosecuted within the six months. So that the whole of one of the Acts of Parliament alluded to, has been altered or repealed since the Union; and yet in the year 1732, it was disputed whether the Union did not make it perpetual!

If the Corporation Act may be repealed, it will not be an easy matter to find out a distinction, which can persuade men's minds, that the Test Act is not in the same predicament. That it has been so considered by the Legislature, is perfectly clear; for this second supposed fundamental and essential part of the Union, has also been materially altered. In the reign of George the First, the time allowed for receiving

¹ 5 Geo. c. 6.

the sacrament was enlarged from three lunar to three calendar months, and afterwards, in 1743, to six months, as it stands at present. It would be tedious and uninteresting to observe upon every single instance of the exercise of this power by the Legislature, when in the statute book will be found not less than three-score Acts of Parliament; by each of which the times mentioned in the above laws have been extended beyond the limits, as supposed to have been fixed at the Union.—The inference is obvious. If these Acts are immutable, they ought not to be altered in a single letter; but if their operation may be suspended for a day, it may be suspended for ever. The most minute alteration or the shortest suspension is as much a breach of the Act of Union, as their total repeal would be. The prolongation of the time operates as an exemption of those who would otherwise fall within the provisions of the Acts; and all that the Dissenters now ask for, is a permanent exemption to the like effect. In either case the power is the same, and if the Legislature can do the one, it must be able to effect the other.

One argument of some moment, however, may be derived from the Act of Union, *in favour* of the present application. It is, that the strict-
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ness with which the internal constitution of the church is to be preserved, makes it very improper for any laws to subsist—which in their execution embarrasses the established clergy, as intimated above; and make it necessary for them to violate either their civil or ecclesiastical duties.

C H A P. IX.

THE PRESENT IS THE PROPER TIME FOR THE
PROTESTANT DISSENTERS TO APPLY FOR
RELIEF.

THERE is another objection to the intended application, which from its having been constantly urged against every former attempt of the Protestant Dissenters to obtain the restoration of their rights, they cannot expect will be forgotten now. They will be told, that this is not the proper time for them to press for any exemption from these odious Acts.—“The time, however,” as the excellent Dr. Kippis said on another occasion, “is a circumstance which deserves but little consideration, when the thing solicited is a right. In that case redress, in duty, ought to be granted at the instant in which it is asked.”—If the state Minister is consulted upon the subject, he will probably pray the Dissenters to postpone their application; it being the common practice of persons in his situation, and the cant of office. Such was the conduct of the Ministers of George the First, and of Sir Robert Walpole in 1732. And indeed the advocates for the church must have this objection always ready; for it never

can seem a proper time to give up any of its powers.—But the present moment is peculiarly favourable to this attempt of the Protestant Dissenters ; and upon examination it will be found, that the Dissenters are invited to it by as fortunate a concurrence of circumstances as could reasonably be expected ever to occur in the dispensations of Providence. And it is a duty they owe to themselves and their posterity, to embrace the first opportunity to shake off the fetters and assert their liberties.—Besides, such are the liberal and enlightened sentiments of their fellow-subjects, that they are reproached already by many for having remained in a torpid state so long.

In the first place, the situation of public affairs may inspire the Protestant Dissenters with the most sanguine hopes of success.—The church is in no danger from Papists or Sectaries of any kind ; there is now no formidable Pretender to the Crown ; and the nation is in profound tranquillity both at home and abroad.—The heavy taxes under which the kingdom groans, and the deranged state of the finances, have engaged the principal attention of the Minister ; and it cannot therefore have escaped his notice, that the most certain mode of increasing the national wealth is to increase its population. Opinion is the strongest

strongest tie to keep the subjects of a state at home ; and it sometimes happens that a politician cannot more successfully make his country superior in fact to all others, than by inducing its inhabitants to *think* that it is so.

The Monarch who now fills the throne, descended from a House deservedly dear to the friends of civil and religious liberty, has inherited the tolerant spirit of his ancestors ; and has avowed himself an enemy to persecution in every shape. In his reign the Ministers of the Crown have, with unexampled liberality, granted an establishment to the Roman Catholic religion in Quebec, and restored the Protestant Dissenters of Ireland to their rights as citizens, and given other testimonies of their liberality. And can it be conceived that the Prince who has graciously lent an ear to the complaints of catholic subjects on the other side of the Atlantic, will be deaf to those of the Protestant Dissenters of England ; or will withhold from them those rights, which their brethren in Ireland are permitted to enjoy !—The principles by which a revolution is brought about, according to some, are no longer useful, but even odious after a revolution is fully established : But maxims so narrow, can never fill the minds of any who once both adopted and profited by these glorious principles. Some regard and attachment
must

must always remain for a sect, who, without lucrative or other interested motives, have resolutely risked so much for others and for their country. A politician must always view with satisfaction a sect who cherish, in conjunction with others, those useful civil persuasions; which have rendered a small nation in this happy island, able not only to defend themselves, but to maintain extensive dominions in the face of nations far more numerous than themselves: and though opposition may now and then occur from them in passing and personal concerns, which can end in nothing serious, and may often be even salutary; yet the security of the family and nation cannot but derive advantage from the part they have so generally taken, and which would have been more effectual had they had more power.

The Protestant Dissenters may press upon the recollection of the Legislature, the long trial that has been made of their principles, and the uniform proofs they have given ever since the Revolution of their attachment to the constitution. For more than a century they have been unjustly stigmatized either as Papists, or as evil spirits and bad subjects; and yet, during that time, they have been no mean instruments of preserving the liberties of their country, and have
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more than once proved themselves to be more firmly devoted to the public good, than even those for whom they have been excluded. They alone can boast of the unshaken loyalty of their whole *body* to the present royal family in the worst of times, though they have to recount hardships endured from their affection for it.

But they must not rely too much on the justice of their cause, their personal merits, or their sufferings;—and yet if arguments of that nature could ever have weight with any minister, they ought to operate powerfully with the present one. When at the conclusion of the last parliament, an attempt was made in the opinion of many, to destroy the independence of the three branches of the legislature, and one of them had endeavoured to influence the deliberations of another; the best friends of the liberties of Britain were alarmed for the safety of the constitution, and while the House of Commons was struggling against this dangerous innovation, the king thought proper to dissolve the Parliament. At the following election, a general frenzy ran through great part of the kingdom. The Dissenters catching the contagion, shook hands with Jacobites and High Churchmen *, and forgetting those principles which

* The remark the Bishop of Cloyne makes on an author who connected the innovation in the church with the payment

which had endeared them to their country, ranged themselves under the banners of prerogative against a House of Commons, who professed to support the rights of the people. Their exertions, however misplaced, were attended with success, and the present administration was brought with triumph into power.—This desertion of their principles may justly be a cause of reproach to the Dissenters from their fellow subjects; but it enhances the obligations of the present minister to them, and gives them a right to expect his assistance in return. A few weeks will shew how far a sense of gratitude is impressed on his mind; though obligations conferred by the sacrifice of principle are not generally the best repaid.

But the Dissenters ought to bear in mind, that their success does not entirely depend upon the inclinations of the minister. It is true, that he can carry votes to try the most problematical experiments by vast majorities; yet this appa-

ment of the national debt, is not inapplicable here; it reminded him “of the representations of St. Ambrose, in his carriage drawn by a horse and a bear, whom the Saint had miraculously pressed into his service.” The carriage of prerogative drawn by a Jacobite, and a Protestant Dissenter, was a goodly sight, and had something familiarly *miraculous* in it.

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rently powerful minister, has been frequently left in a minority ; and though *pledged* by the most solemn ties *as a minister, and as a man, boldly and honestly* *, to carry a reform of parliament, was unable to compass it. And the son of the high spirited Chatham has continued to hold his place, although the majority of the cabinet ministers opposed that measure, and the Secretary of the Treasury voted against it. I will not pretend to say, by what power his good intentions towards the reform of parliament were frustrated; but if he did his utmost both as a minister and as a man, there can be no doubt that the opposing power existed somewhere.

Experience tells us, that the voice of the reverend Prelates of the church, has also a commanding influence. Upon several occasions, and in different reigns, it has prevented the favourable dispositions of the king and his ministers from operating to the advantage of the Dissenters. From the same quarter arose an opposition to the application of their ministers for relief in the present reign ; for twice that Bill passed the House of Commons, but was thrown out in the House of Lords, when all the bishops

* See Mr. Wyvill's circular letter on this subject, dated St. James's, December 21, 1784.

who were present, or who ordered their proxies to be given, voted against it.

Upon that occasion, the application had the hearty concurrence of his Majesty and his ministers; and at length the bishops, convinced by argument of its propriety and justice, allowed it to pass when it came before them for the third time, in 1779, without any opposition.

The inference from these observations is obvious.—Let not the Protestant Dissenters put their trust in king, minister, or prelates; but let them confide in the justice of their cause, and the generosity of their fellow citizens. Let them not be deterred by promises, or intimidated by threats, from prosecuting their design; but let them proceed in a peaceable but determined and persevering manner, to use all the helps which Providence has placed in their power. The enlightened and liberal spirit of the times will prove their best support. Persecution now hides her “diminished head,” and the rights of mankind meet with supporters in every corner of the globe.—Should king, minister, and prelates, be arrayed against them, let them not shrink from the contest; their claims fear not discussion, and they may cheerfully appeal to the impartial decision of public opinion,

opinion, which stamps the characters of all men, and of all measures ; is paramount to princes and potentates, and to which kings, ministers, and prelates must ultimately bow. Should they be defeated in their *first* attempt to obtain a restoration of their rights, they ought not to abandon their object, but repeat their application till the voice of reason can be heard. By perseverance they must be victorious. Their ministers were unsuccessful for a time, but, after a fair and full discussion of the question, the whole bench of bishops were converted, and yielded without one dissentient voice to the divine influence of truth ; so certain is it, according to the persuasion of our ancestors, that "*Magna est veritas, et prevalebit.*"

P O S T S C R I P T.

SINCE the preceding sheets were sent to the press, Bishop Sherlock's arguments against a repeal of the Corporation and Test Acts have been republished, with a dedication to Mr. Pitt. An air of triumph attends them, as if they were thought incapable of an answer. It is therefore necessary to state these arguments concisely, in order to confute them one by one; not forgetting the modern dedication and advertisement prefixed to them.—We shall begin upon them without further preface.

P. 4. A visible communion, like that of the sacrament, is the best proof that can be had of good wishes to the church.—*Remark.* Mr. Baxter, and other Dissenters, have proved this Test insufficient with respect to Dissenters; and Mr. Anthony Collins, and other infidels, have proved, that (since “the *religion* of man is to “make the test*,”) it is futile in the case of infidels.

P. 6. *et passim.* The sacrament is applied as a test, and not as an act of religion.—

* Bishop Sherlock's words.

Remark. It often operates as neither ; since in itself it does not serve as a test of orthodoxy in various respects ; and since it is often taken without any sentiments of religion on the part of the communicant.

P. 6, 7. The Corporation Act requires the test to *precede* the occasion for which the test is called.—*Remark.* It does so in words ; but in fact, this provision is eluded by the party's qualifying with a *view* to this occasion. The Test Act, which is of much superior moment, calls for the test *after* the occasion : it requires a direct, instead of an incidental test.

P. 10. The Sacramental Test resembles an oath.—*Remark.* An oath has civil objects in view ; the Sacramental Test ecclesiastical ones : The state has a right to know evidence, and to obtain promise of fulfilment of any duties that are undertaken ; but not to know the doctrinal religion of men : The oath is simple and general, is founded on a truth in which all religions agree, and does not mark the sect ; while the test is complex and peculiar, and requires a profession not only of the Christian but of the established faith : In administering the oath or declaration, there is toleration as to the modes of taking it ; in administering the test, there is

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no toleration, and it must be in one way: The oath requires no peculiar frame of mind; but every one knows that it is actually otherwise with communicants at the Lord's table: The oath is effective, and connects itself with the immediate object, by desiring God to be the witness and avenger; the other is declarative and clearly not relative to the occasion for demanding it: The one is understood to be sanctioned by revealed religion, or if contrary to it, has no force in the present argument; the other has no precedent, not even among men, being peculiar to this nation: The oath has other sanctions, namely, the public concurrence and opinion, and a sense of the propriety of the occasion for demanding it, which whenever wanting, reduces the oath to a mere ceremony, (as it always becomes in ordinary or absurd cases); while the sacrament wanting these sanctions, has become (as every body knows) a mere ceremony, which has efficacy only as it acquires it from the conscience and sensibility of the party. Under all these circumstances, many good men have doubted the *propriety* of administering oaths as commonly done; and shall the case of an oath then be *paralleled* to that of a test?

P. 13. There is no better Test than the Sacrament to be found.—*Remark.* The history of a sect is a better test; and the temper of the

age, a still better.—Besides, how came proofs of morality to be forgotten? Is it because they have less to do with a civil state, than religion has?

P. 16, 17. It is as justifiable to confine offices to the well affected to the church, as it is necessary to exclude fools from the council board, and cowards from the army.—*Remark.* There is no test used by the state either respecting wisdom or courage, before admission to civil offices; and why should there be respecting the established religion? A Sacramental Test may be proper for ecclesiastical, but why for civil offices? Cannot the state wait, and punish whatever is done wrong in office respecting religion, as it does respecting professional want of courage?

P. 19. The public *may* have cause for excluding *certain* descriptions of men from office.—*Remark.* The truth of an indefinite rule, is distinct from the propriety with which it is applied to particular cases.—Why are Dissenters to be among the excluded? Formerly narrow rules prevailed, and men were forced to shew their title to an admission under them: at present the generous side is taken, till the reverse is proved; the rule is made large, and it is the

the fitness of the *exclusions* that are now to be proved.

P. 20. It must be a sad world, when avarice and lust of power serve as a claim to privileges.

—*Remark.* These are rather coarse words; and no otherwise applicable to the pretensions of Dissenters, than to those of ministers of state, or ministers of the church, when aspiring to wealth, honor, and the means of doing good. If the clergy persist in using them, they will probably hear it intimated, that the motive for *opposing dissenting claims*, are founded on a desire of monopolizing wealth and power. The *nolo episcopari*, and other weak parts of the ecclesiastical character, are not soon forgotten.

P. 22. All governments have a right to provide against probable danger.—*Remark.*

True, but prove the danger; and prove that the measure proposed will make the danger less.

P. 22. It would be unreasonable to beat a man, because he has an infectious distemper; but not unreasonable to deny him a place in the family.—*Remark.* There are many things taken for granted here. But the expression of the family, shews how difficult it is to suppose, that the Dissenters have not a *share* in the state, as

well as the members of the established church. If the author had said *my* family, the reason of the appropriation of the term would naturally have been demanded.

P. 23. Though the reformation claimed the use of the scriptures, yet the government of England had sense enough to know, that to leave every man to make the *best* use of his bible, without any farther direction or *restraint*, would naturally tend to confusion.—*Remark.* The only one that is to be made here is, that this curious position is open to *every* conscientious man's remark,

P. 26. Religion was not the whole of the rupture between Charles the First and his people.—*Remark.* This fact is a contradiction to the pretext, that the quarrel of those times was only owing to sectaries. Mr. Pym and Mr. Hampden were not Dissenters.

P. 35. The acts prayed to be repealed were passed in self-defence.—*Remark.* Will any man say, that *self-defence* is called upon respecting the Dissenters? How ill must their numbers and principles be known? Much less can any man say, that thinks at all, that the church have *confined* themselves to measures of self-defence.

P. 37.

P. 37. Why should the church give up an establishment, to expect a toleration?—*Remark.* This is a true ecclesiastical subtlety; as if it were not possible for a church to be safe, and yet tolerant. To say otherwise would be to vindicate all the persecuting principles of Puritans and Papists: It would be affirming, that toleration is *essential* to hierarchy.—If the Dissenters are to be credited, their laity (to whom the present question relates) are not so fond of establishments, as to wish to establish themselves; “ Their principles (as recited by Bishop Sherlock) amounting to a general toleration of “ of all peaceful subjects.” p. 30.

P. 38. The crown is limited in its religion, and why should not the subjects be so?—*Remark.* The king has powers to do mischief, which no subject possesses; and therefore his hands may be more naturally tied than the subject's; but having tied them, it secures those of other persons, who must receive through him their power to hurt. Besides, as being head of the church and state, the public will naturally look for one possessing the principles of the majority of the nation, to be set over them in that comprehensive capacity.

P. 42-3. A very few subjects in a little town are represented in Parliament by as many members as the largest counties; admissions to corporations therefore should be taken care of, that the little towns of a county may not govern the consciences of a county.—*Remark.* When Mr. P—— and Mr. W—— attempted a remedy for this difficulty in *civil* matters, it is fresh in memory how little the bench of bishops, or any ecclesiastic (except the one in question) attended to the force of this argument. Though the “allies” of the state, and though bound to “support” it, according to current doctrines, they seemed to think that such civil matters did not concern them.—Let it be added, to go back to Bishop Sherlock’s position, that it takes for granted (what can never be allowed,) that Dissenters have power and have disposition to molest what is now established.

P. 44—45. If any power is to be kept out of the hands of Dissenters, it is that power which gives them an influence in making laws for church and state.—*Remark.* If this be true, how absurd is it to let Dissenters sit in both Houses of Parliament as legislators, and not in corporations or other inferior executive situations!

P. 47. The Dissenters are beholden to King James's declaration for their arguments against the Test.—*Remark.* Did no Dissenter or Englishman write, before the time of King James, on civil or religious liberty? Did not King James write as a Popish Dissenter? And must it not always be expected that when men are put into a corner, they will seek to get out of it? Force, whenever wrongly used, in countries of any freedom, will produce critics; for the mind of a free-man is vigorous and *elastic* under pressure.

P. 48. Mr. Fagil, on the part of the Prince and Princess of Orange, declared against the repeal of the Test Laws.—*Remark.* So did Charles the Second from Breda declare personally against the Test Laws. But princes, who view religious measures through the medium of politics, are authorities on neither side; though certain it is, that King William in his *own* person, spoke in favor of employing Dissenters in public situations, and patronized motions for laws to that effect, but all in vain. One hundred years, however, of increase of knowledge, one hundred years of collected experience, put modern legislators in a much better state for judging than either Charles the Second or William the Third. Sectaries have not stood
still

still in the tide of time, and whoever judges of them from the disgraceful figure they made as Puritans, &c. is little fitted to decide the *present* question.

P. 50. No Arminian is admitted into the magistracy in Holland.—*Remark.* Those who republished Bishop Sherlock's arguments should have known, that Dr. Sykes denied this; and without going farther, we may poise one church dignitary against the other; or rather, we may assert that examples even of nations are of no avail against justice.

P. 51. The Act of Union made perpetual every Act then in force touching the security of the establishment.—*Remark.* It is known that the Act of Union has been invaded in several instances, in points of mere expediency; and surely there should be less scruple respecting it in cases of justice. But it is matter of *construction*, what affects the establishment, and what does not; and it is to be hoped that the present application does *not* affect it. Is not the legislature the best interpreter of its own acts, and has it not altered a variety of statutes respecting Catholics, Dissenters, Clergy, Marriage, &c. not to forget the *Test Laws* themselves?—The fact is so notorious, that had Bishop Sherlock lived

lived to the date of these accumulated examples, he would certainly have suppressed the argument,

P. 55. The Test Acts oblige no man to receive the sacrament.—*Remark.* True, but it TEMPTS them to receive it, and to receive it criminally; “to eat and drink damnation to themselves.” We daily pray God “to deliver us from temptation,” and yet we tempt men beyond their strength: we rain (as the scripture says) snares upon them. Nay, we do worse; we impose a restraint where we have *no right*, and then tempt men to break through *that* restraint. In short, the only use of the Test Act seems to be, to spoil the conscientious sectary, who, while conscientious, is commonly just as good a servant to the state under one impression of belief as under another.

P. 65. It is not true, that the clergy are bound by civil law to give the sacrament against the rules of the Canon Law.—*Remark.* Suppose the denial true, would a poor curate in a country village at 40*l.* per annum, run the risque of a scene of law-suits in distant tribunals, with a powerful layman, for refusing it? Would a bishop of 4000*l.* per annum run the risque? It is to be feared not.—Were none to be admitted

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to partake in the Sacramental Test, but those who had in all respects fulfilled the minute orders of the Canon Law, &c. and were this Test now to be circulated by law among lay or clerical persons in office, the number of ejected persons would certainly far exceed the proportion of ejected ministers at the time of the Act of Uniformity.

Dedication to the new Edition of Bishop Sherlock's Book. Let the throne support the church, the church support the throne, and God will support both.—*Remark.* It seems impious to appear to limit the support which the Deity in his wisdom may choose to give to the throne, to the case of the throne being allied to the present establishment. It is also contrary to fact, the throne standing of old, before the present establishment existed, and being shaken at a moment when they were closely allied. It is contrary to humility also; since when good men look at the different opinions among different nations, and at their fluctuations in different ages, nay, even at the changes happening in their own breasts, all they can venture to assert is, that they believe they are themselves in a true persuasion.

Adver-

Advertisement. This book may be written against, but it cannot be answered.—*Remark.* “If there is any reason in what I have offered it will prevail with reasonable men; if there be not, I am not so unreasonable as to desire it should.” (Concluding sentence of Bishop Sherlock, p. 73.)

Note to confirm some of the Remarks in the Postscript.

The entire extinction of the sect of Presbyterians in England, who are now all become Independents as to the point of church government, and the strictness with which multitudes of the Dissenters adhere to the doctrines of the church of England, as stated in the Thirty-nine Articles, (a strictness far exceeding that with which they are accepted or believed in general by the English clergy;) these two circumstances, I say, may serve to compose the apprehensions of the clergy as to any danger to arise from adding to late indulgencies to the Dissenting clergy, those at present prayed for by their laity.

But

But there is another style of argument on this subject, even yet more convincing than the foregoing, to be drawn from the conduct of the Protestant Dissenters settled in parts of America. After the power of England has ceased in that country, they have been able to shew in the Northern and Middle Colonies, that they have been falsely accused of objections to the introduction of bishops. Those states which most wanted bishops, from having the episcopalian system most prevalent among them, namely, the more Southern Colonies, are precisely those which have been most backward in procuring the establishment of bishops.—The states most filled with Dissenters are the states also among them which have been most liberal respecting Test Laws, which, it must be observed, are confined in general where they exist to persons seated in the legislature, and do not extend to inferior officers, one or two states excepted.—The declaration of the state of Virginia respecting religious liberty is a masterpiece, deserving record in letters of gold.

It is true, that some of the Dissenters in North America were formerly intolerant; but Dr. Franklin, in a letter written in 1772, expressly to favour the application of the Dissenting ministers for relief from subscription to religious

religious articles, has given the *explanation*, which it is impossible to avoid reciting here.—

“ If we look back for the character of the pre-
 “ sent sects in Christianity, we shall find few
 “ that have not, in their turns, been persecutors
 “ and complainers of persecution. The pri-
 “ mitive Christians thought persecution ex-
 “ tremely wrong in the Pagans, but practised it
 “ one on another. The first Protestants of the
 “ church of England blamed persecution in the
 “ Romish church, but practised it against the
 “ Puritans: these found it wrong in the
 “ bishops, but fell into the same practice
 “ both in Old and New England.—To account
 “ for this we should remember, that the doc-
 “ trine of toleration was not then *known*, or
 “ had not prevailed in the world. Persecu-
 “ tion was not in those days deemed wrong in
 “ *itself*; the general opinion was only, that
 “ those who are in error ought not to persecute
 “ the truth; but the possessors of truth were in
 “ the right to persecute error, in order to de-
 “ stroy it. Thus every sect believing itself
 “ possessed of all truth, and that every tenet
 “ differing from theirs was error, conceived
 “ that when the power was in their hands, per-
 “ secution was a duty required of them by that
 “ God whom they supposed to be offended
 “ with heresy.—By degrees, more moderate
 I and

" and more *modest* sentiments have taken place
 " in the Christian world; and among Pro-
 " testants particularly, all disclaim persecution,
 " none vindicate, and few practice it. We
 " should then cease to reproach each other
 " with what was done by our ancestors, but
 " judge of the present character of sects and
 " churches by their *present conduct* only.

" How to determine on the justice of this
 " charge against the present Dissenters, parti-
 " cularly those in America, let us consider the
 " following facts. They went from England
 " to establish a new country for themselves at
 " their own expence, where they might enjoy
 " the free exercise of religion in their own way.
 " When they purchased the territory of the na-
 " tives, they granted the lands out in townships;
 " requiring for it neither purchase-money nor
 " quit-rent, but this condition only to be com-
 " plied with; that the freeholders should sup-
 " port a gospel-minister (meaning probably
 " one of the then governing sects) and a free-
 " school within the township. * * * But in
 " process of time some turning to the church
 " of England, * * * objections were made to
 " the payment of a tax appropriated to the sup-
 " port of a church they disapproved and had
 " forsaken

" forfaken. The civil magistrates, however,
 " continued for a time to collect and apply the
 " tax, according to the original laws which had
 " remained in force ; and they did it the more
 " freely, thinking it juſt and equitable that the
 " holders of lands ſhould pay what was con-
 " tracted to be paid when they were granted,
 " as the only conſideration for the grant. * * *
 " But the practice being clamored againſt by
 " the Episcopalianſ as perſecution, the Legiſſa-
 " ture of Maſſachuſets Bay, near thirty years
 " ſince, paſſed an Act for their relief ; requir-
 " ing indeed the tax to be paid as uſual, but
 " directing that the ſeveral ſums levied from
 " members of the church of England, ſhould be
 " paid over to the miniſter of that church with
 " whom ſuch members uſually attended divine
 " worſhip ; which miniſter had power given
 " him to receive, and on occaſion to *recover*
 " *the ſame by law.* * * *

" And now let us ſee how the perſecution
 " account ſtands between the parties.

" In *New England*, where
 " the legiſlative bodies are
 " almoſt to a man Diſſen-
 " ters from the church of
 " England,

" 1. There is no teſt to
 " prevent churchmen hold-
 " ing offices.

In *Old England*.

1. Diſſenters are exclud-
 ed from all offices of profit
 and honour.

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" 2. The

“ 2. The sons of church-
 “ men have full benefit of
 “ the universities.

“ 3. The taxes for sup-
 “ port of public worship,
 “ when paid by church-
 “ men, are given to the
 “ Episcopal Minister.

2. The benefits of edu-
 cation in the universities are
 appropriated to the sons of
 churchmen.

3. The clergy of the Dis-
 senters receive none of the
 tythes paid by their people,
 who must be at the addi-
 tional charge of maintain-
 ing their own separate wor-
 ship.”

See Political, Miscellaneous, and Philosophical Pieces,
 by Dr. Franklin, p. 74, &c.

I shall be readily excused for citing these re-
 markable passages.—The northern states it must
 be added are very rigid, but in what? not in
 enforcing belief, or contribution, or submission,
 to any established sect; but in carrying into
 strict execution all laws for due observance of
 the sabbath, and against profane swearing, &c.
 which, as every Justice of Peace knows, make
 part of the laws of this country, though certain-
 ly very little enforced or complied with. These
 measures do not go to the length of prohibiting
 this or the other sect; but rather to second the
 endeavours of its ministers for the propagation
 of each of them. Accordingly we find, in the
 late Declaration of Rights which formed the
 foundation of the new Massachuset's constitu-
 tion: “ That in this state *every* denomination
 “ of

“ of Christians, demeaning themselves peace-
 “ ably and as good subjects of the common-
 “ wealth, shall be *equally* under the protection
 “ of the law ; and no subordination of one sect
 “ to another shall *ever* be established by law.”

Certain it is, that no countries under the sun, shew more indulgences to variety in religious opinions than the United States of North America ; and since so large a majority of their citizens are Dissenters, nothing can be more clear than the proof it affords, that the modern disposition of the Dissenters, as Dissenters, is not intolerant.

It remains therefore for the clergy, (to whom this note is principally addressed,) to decide, as far as respects their influence and exertions, whether or not they will accede to the request of the Dissenting Laity upon the present occasion. By acceding, they see how little risque they run. By not acceding, they will have one difficulty more to contend with, in the situation into which they are brought in the present times, by their own decline in strict manners and official diligence on the one side, and by the change of opinion and of disposition in the laity of all descriptions and sects on the other. The Dissenters are a trifling body in themselves;

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but

but as furnishing a *measure*, by which to judge of the Christian spirit of the clergy, their case may in the event produce an impression upon the minds of *others*, who are not Dissenters.— There are two ways of treating difficulties of this sort: the one is, of resisting every change, which is in other words, a *trial of strength*. The other is, of giving way and compounding upon some points, that the call for strength being thus made less, the strength that is possessed may prove sufficient for supporting the remaining points. The public opinion is changing fast on many subjects; and shall the clergy wait till things accumulate, or redress so much, as to make people *contented* under what remains; shall they open sluices to carry off a part of the coming tide, or oppose the dam of ancient prejudices to stem the whole of it?—The question respects themselves, more than the Dissenters or the public, for who have most at stake?— This is not the language of insolence, but (if they knew the author of it, they would find) of friendship, good order, tranquillity, and religion.

F I N I S.